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# CASE

OF

## IMPOTENCY DEBATED,

In the late Famous

## TRYAL at PARIS;

Between the Marquis de Gesvres, (Son to the Duke de Tresmes, present Governor of Paris) and Mademoiselle de Mascranny his Lady, who, after three Years Marriage, commenc'd a Suit against him for IMPOTENCY.

Containing,

J. The Pleadings at large on both Sides.

II. The Reports of the King's Physicians and Sur-

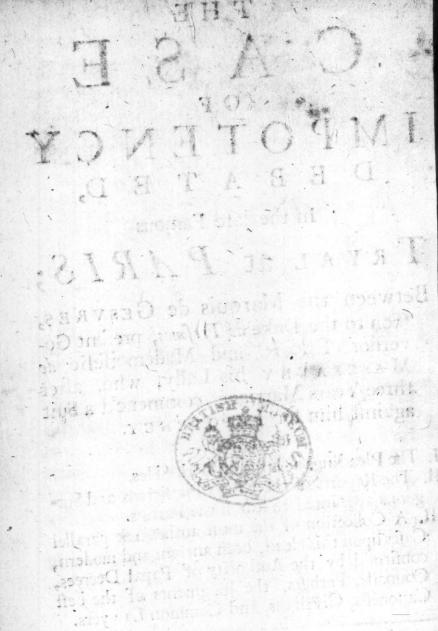
geons appointed to fearch the Parties.

Cases upon this Head, both ancient and modern, confirm'd by the Authority of Papal Decrees, Councils, Fathers, the Judgments of the best Canonists, Civilians, and Common Lawyers.

Done from the PARIS Edition.

In Two Volumes.

Bible against St. Dunstan's Church in Fleet-street. 1714.
Price Six Shillings,



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Advertisement by the Transact.

# Advertisement

BYTHE

### TRANSLATOR.

HE following Sheets contain a faithful Account of the Proceedings between the Marquis de Gesvres and bis Lady. This Tryal has been more taken Notice of all over Europe, than any Case of the same Nature bitherto known, the Hearing baving continu'd for above twenty Days.

And because the English Readers may be desirous to know somewhat concerning the Parties. I can assure them that the Marquis de Gesvres is not only descended from one of the best Families in France, but is likewise a very handsome, jolly, and seemingly compleat Gentleman: But there's no trusting to Looks; as may be too well testify'd by bis unhappy Spouse, who, though not equal to him

#### Advertisement by the Translator.

in Dignity of Blood, yet was one of the greatest Fortunes in that Kingdom, her Estate being near 4000 L per Annum, hesides a great deal of ready Money: Which was very welcome to the needy Family of the Marquis de Gesvres.

We hear that his Father, the Duke de Tresmes, by his Interest in Madam Maintenon, (from whom 'tis said be had receiv'd Favours before his Most Christian Majesty had conferr'd any on that Lady) and by telling the King that he himself was impotent 'till he attain'd to about the Age of 25 Years, his Majesty has, upon that Consideration, permitted the Marquis de Gesvres to cohabit with his Lady 'till he arrives at the same Period, and then to try what he can do in Lischarge of his Conjugal Duty.

All that I have farther to add, is, that a peculiar Care has been taken in this Translation to come up to the Spirit of the Original; and I must own, that the Pleaders so well discharg'd their Office, (especially those for the Lady) that it is no easy Matter to do them Justice; but since we stand in little need of borrowing Politeness of Expression from any neighbouring Nation, I hope the Reader will not find many Faults of that Kind to atone for.

ry bandfome, jolly, and feemingly compleat Gentleman: But there's no trusting to Letter, as may be too well testify'd by bis unbappy Sponse, who, though not equal to bim in

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are not able to deter O that Hairs when.

Mademoiselle de MASCRANNY.

Wife was necessary; when, in a Word

PLEA for Lady MAGDALEN-EMI-LIA DE MASCRANNY, who sues for a Dissolution of her Marriage with the Marquis de Gesvres, on account of Insufficiency.

Against the said Marquis.

GENTLEMEN,

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F this Cause seems considerable, 'tis only to such as suffer themselves to be dazled by the Importance of the Question, or the Quality of the Parties. For they who will judge of it according to its own mere Merit, will be so B

far from thinking it a Cause of great Extent or Difficulty, they'll scarce believe, that before such penetrating Judges as you are, Gentlemen, there's any occasion for Council.

The whole of the Question is, Whether, in an Accusation for Impotence, it is not according to the Rules to inspect the Body of the Wife, who avers she's a Virgin, when the Searchers, who inspected the Husband, are not able to determine what He is; when, to remove their Doubts, they have either infinuated or declared, that a Visit upon the Wife was necessary; when, in a Word, the Husband affirms he has confummated his Marriage an infinite Number of Times, whilst the Wife denies that such pretended Confummations were any thing but empty Endeavours; and consequently, the Wife must carry in her self the Proofs of the Truth, and fuch Proofs must be decisive for or against her: This is the State of the Question. Now to the Fact.

The Parties were married the 1st of June, 1709. Their Marriage was follow'd by Co-habitation from the said 1st of June, to the 24th of March last past, that is to say,

three Years, or little short on't. wino

During all this time, my Client stands to it, that the Marquis de Geswres has not so much as once done the Part of a Husband by her; not that he wanted Will, but

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Power. That he wanted not Will is manifest from his imitating all he cou'd of a Husband, the Gestures, kind Looks, Postures; every thing but reality. So that for those three Years, there was not only Cohabitation, but likewise Offers and Essays of Consummation, all frustrate, and without effect.

My Client, forc'd by the inexorable Laws of Conscience, by the Commands of her Confessor, who even refus'd her Absolution; forc'd likewise, as is notoriously known, by an almost desperate Indisposition of Body, did, at length, find her self reduc'd to the sad Necessity of bursting forth, and applying for a Dissolution of her

Marriage on account of Impotence.

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The first Step, in an Affair of this Nature, is interrogating the Husband. To this end my Client drew up, and caus'd to be put to the said Marquis, several Heads of Examination; and, in those Heads, she has describ'd the Kind and Manner of the Impotence she charges him with. She does not alledge a Privation of the Organs necessary for Generation: No; all she urges is, that those Organs are absolutely destitute of Motion. You understand, Gentlemen, what I mean; and, therefore, need not be inform'd, that the Impotence, which I tax the Marquis with, is of the Nature of that which the Canons call Frigidity.

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The Heads of Examination or Facts being notified the 19th of April, the Marquis attended the 20th. When the Official ask'd him his Name, Age, Quality, Abode, He answer'd very regularly. When he ask'd him, Whether he was marry'd to the young Lady Mascranny my Client, he answer'd, yes. When after this, they ask'd him, If, at the Time of his Marriage, he was appriz'd of the End for which Matrimony was ordain'd? He reply'd readily, That he was very well appriz'd of it. But when they came to the 4th Article, where the Question is, Whether he had confummated his Marriage? He demurred, and required to have three Days allow'd him to reply, in order, we suppose, to cook up an Answer with his Council.

The Council, as luck would have it, had feen in his Breviate, that the Marquis had confummated, not once, but as often as occasion offered; and since Occasions of that Kind return every four and twenty Hours, he might, at that rate, have consummated seven or eight hundred times: Upon which, Gentlemen, I beg you would give me leave to make one Observation. There is no Example, that a Lady of eighteen or twenty Years of Age, brought up in a School of Piety, imbued with the Principles of Religion, bless'd with the Light of Reason, and guided by the Counsels of many very prudent

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dent Relations, was ever fo wicked, and, at the same time, so sensies, or rather so mad, as wrongfully to accuse and brand with Impotence a Husband of fo much Mettle, who must carry about him sufficient Proofs of his Manhood, who likewise must have left within the Person of my Client Tokens of his Atchivements; and, who consequently must have it in his Power to confute, and afterwards to punish severely the Calumny. Such an Attempt would be the more unadvised, in that the Husband, whom - my Client has to do with, is no ordinary Person. He's the Son of a Duke and Peer, who is by Blood and Intermarriages related to all that's most powerful, either in the Army, the Church, or the Law.

So then the Marquis de Gesures says, That he has consummated his Marriage seven or eight hundred times; and, I say, he is incapable of consummating at all: This is

all the Question that is between us.

There must be Proofs to verify Impotence, when the Wife avers, and the Husband denies. Now these Proofs cannot possibly be found but in the Person of the Husband, or in that of the Wife: In the Person of the Husband, when he is unnaturally form'd: In the Wife, when she continues still a Virgin.

My Client well knew, that the Proof would not be found complete in the Person

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of the Marquis. A Certificate from Beffiere, that was handed about, had given to understand, that he bore about him a Picture of a Man, so like one, it could do every thing but speak. So all the recourse of my Party for Proof, was in her felf. And therefore, in a Petition prefer'd by her the 2d of May, she sets forth, That she is still a Virgin; and offers to confirm the same by being searched and inspected by Midwives, as usual in the like Cafes.

The Parties counter-plead upon this Petition; and, by your Sentence of the 4th of May, you order, Sir, that before you determine upon my Conclusions, the Marquis de Gesvres shall be visited; which had already been ordered by two Sentences of the 27th and 30th of April: Nothing was ever more Sage. For, 'tis certain, the Visitation of the Husband, ought always to precede that of the Wife; because the Searchers may find, in the Person of the Husband, such Defects, as, when discover'd, may put an end to the Suit, and fave the Wife the Confusion she must undergo in an Examination.

Here, Gentlemen, it is to be observ'd, that the Sentences of the 27th and 20th of April, which directed the Visiting of the Marquis de Gesvres, contains, That they shall proceed to that Visitation, to find out whether be was disabled, or not; That the Searchers should draw their Report, according to the Condition of

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fuch Inability, and upon the Facts and Articles notify'd to the Marquis de Gesvres at my Client's Request: Upon which Facts and Articles the Marquis had been interrogated. Thus the Lesson prescrib'd to the Searchers, was to examine, upon the Person of the Marquis, whether the Facts, I had suggested, did agree with the Condition they should find him in; that is, you ordered them to compare those Suggestions with his Person, and to confirm, by the Original, the Fidelity of the Picture I had traced out in my Suggestions.

To this purpose the Interrogatories were put into the Hands of the Searchers. They read them attentively over before they went about the Visitation, and they found therein, that the sort of Impotence which I specify'd, consisted in an actual Frigidity; such as took away from the said Marquis all manner of Motion. Now this is what appear'd very true, by the Event of the Visitation.

Of four Searchers who proceeded to this Visitation, two were nominated by the Marquis \*, and the other two by my Client †. They made two different Reports; which it is necessary I should read to you,

<sup>\*</sup> The Sieur Gayant Physician; and the Sieur Mareehal Surgeon to the King.

<sup>†</sup> The Sieur Hequet Physician; and the Sieur Chevalier Surgeon.

fince Reports in these Cases are essential and fundamental Pieces. The Searchers nominated by the Marquis speak thus:

WE have view'd, and carefully examin'd the Marquis de Gesvres, and find that bis exterior Parts serving for Generation, bave the requifite Figure, Size and Dimensions; but as these Conditions are not sufficient for judging of the Consummation of Marriage, because there's occasion for Erection and Ejaculation, which did not appear to us, we cannot absolutely decide, whether be be able to discharge the conjugal Duties or not.

Paris, in stoled navo Signed, as made

May 24. 1712. GAYANT and MARECHAL.

resimi ered had tidentily introduce.

Give me leave, Gentlemen, to make here some Reflections upon the Reasoning of thefe Searchers.

city to contract in an actual Frigidity;

They do really find, in the Person of the Marquis, the exterior Figure of a Man; but they decide at the same time: And what is it they decide? Why, that this Figure, tho' complete, is not sufficient for judging of the Confummation of Marriage. Why is it not sufficient? The Searchers give the Reafon; because two other Capacities are necessary. The First might be apparent to the Eyes of the Searchers. But for

for the Second, it was not possible to give them a Proof of it that could come within the Senses. And wherefore, I pray, do they make this Remark, unless it be to prepare you for the Indecision wherein they

are going to leave you?

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We fee, fay they, Organs; but what can we judge of those Organs, when we find them inanimate? Nay, tho' we had observ'd in them sufficient Fire and Spirit to make them hold up their head, would that have convinc'd us of the Capacity of the examin'd Party? No, doubtless; fince even in that Cafe it would remain to be known whether the Party be provided with another Faculty which cannot be known but by its Effects, and these Effects cannot allowably be render'd sensible to us. Therefore all we can fay is, that we are in an absolute Impossibility to decide, whether the Party be capable to fulfil the Calls of his Condition, up in its Principles: On the contrat 30d 10

Now, Gentlemen, methinks Searchers, who talk thus, do very plainly tell you, if you will observe it, that the sole Inspecting of a fightly Husband, cannot give to Perfons of their Art sufficient Grounds for judging of his Condition, because it is impossible for them to be afcertain'd by the Senfes, whether he be farnish'd with all the requifite Powers; and tho' they may be made ocular Witnesses to one of the Powers,

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there would remain a fecond, which depends on the interior, and which, according to the Rules, ought never to shew it

felf outwardly.

If this be fo, as doubtless it is, what other Consequence does this Discourse leave you to draw from it; but that this grand Secret not being capable of a Discovery, by examining the Husband's Person, it is necessary to look for an Elucidation of it in the Person of the Wife. I don't believe that e'er a Syllogizer upon the Face of the Earth can, from the Argument I have just now mentioned, draw any other Proposition than that; and if you can still doubt of it, you need only hear what the other Searchers fay, and you'll be convinc'd. For by their Report you'll see, that after they have laid down as a Foundation the fame Principles with the former, they don't, like them, leave the Consequence wrapt up in its Principles: On the contrary, they unfold it, and spare you the trouble of drawing it forth. They express themselves as follows.

E have observed, that all the Parts of the Said Marquis de Gesvres, are of a fitting Consistence, Figure, Number and Largeness for performing the Matrimonial Duties : But because all these Conditions are not sufficient for efablishing Virility, and his Power to perform

Mademoiselle de MASCRANNY. II form his Duties, without the Tokens of Erettion, which we saw nothing of, we are of Opinion, that towards deciding whether he's capable of performing the Matrimonial Duties,

capable of performing the Matrimonial Duties, there should appear in him some Tokens of EreEtion; and, because those very Tokens of EreEtion would not be of Force enough to ascertain the Consummation of Marriage, we are of Opinion, that it would be proper to visit the Body of Madam de Mascranny, Spouse of the said Marquis de Gesvres.

Paris. The same Day Signed,

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P. HEQUET, and J. CHEVALIER.

You see, Gentlemen, by this last Report, that the second Searchers agree with the former in all the Principles. The First common Principle is, that bare Formation of the Parts, tho' perfect, concludes nothing, when it is languid. The Second, that the Reason why nothing can be concluded from it is, that all languid Formations become suspected because they are languid. The Third, that even tho' the Formation be attended with Erection, there cannot even then be any Certainty of the Husband's Capacity, through the Impossibility of judging of what remains, and which ought not to be shewn.

After these Principles equally laid down by both Sides, equally admitted and own'd

to be indubitable, I would fain know whether all the difference between the two Reports be any more than this, the one draws a Consequence which naturally results from those common Principles, while the other acquiesces in your Understandings, and leaves the Care of inferring upon You. The First look on you as Intelligences capable of seeing Consequences in Principles. The Second were of Opinion, they ought to behave to you, as to Men; that is, they believ'd themselves oblig'd to set before you a complete Argumentation.

Be pleas'd to let me explain this to you by a Comparison. You take four Guides to conduct you in a dark Way. These four Guides lead you to a certain open Place. Here they leave you; but, at the same time, two of them fay to you, Keep following the Line which we have traced out to you: while the others fay to you, Go to that Village which is before you, there you'll find what you look for. Is it not true, that if the Line traced out by the two first Guides, leads to the same Village which is pointed out by the other two, those four Guides perfectly concur, and all the difference between them confifts in the one's naming the Village you're to go to; whereas the others content themselves with shewing it to you, by describing a Line? Now in this Case, can ye fear mistaking if you follow the

Mademoiselle de MASCRANNY. 13

You see, Gentlemen, the Justness of my Comparison. It is self-evident; and you are not to be told, that the Village where we are to find what we look for, is the In-

spection I demand.

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Any Husband convinc'd of his own Abilities, would have exclaim'd against these Reports; would have look'd upon those Doubts of the Searchers as Defamations; would have offer'd himself voluntarily to a new Visitation; would have urged and demanded a judiciary Examination, not only of his own Person, but his Wife's. But Monsieur de Gesvres, too wise to pretend to Bravery in the wrong Place, has managed matters with much more Prudence. He lays hold of the first Part of the Reports. which bear advantageous Testimony of his Consummation; and after having laid down for a Principle, that to be a Husband, 'tis enough to wear the Shape of a Husband: He from thence concludes, that there is no occasion to mind the Doubts which the Searchers had rais'd to themselves; that those Doubts are idle Scruples; and, that still less heed ought to be given to those Searchers who propos'd the vifiting my Client: But that, without any more ado, he ought to be declared capable, and his Wife reftor d to him.

Upon this Foundation, he prays you, by a Petition of the 30th of May, that forasmuch as the Searchers had found him well form'd, you wou'd please, Gentlemen, without any regard to the Supererogation of the Reports, or to the Request of my Client to be searched, to cast off and reject my Client from her Suit for a Disso-

lution of Marriage.

Behold therefore the State of this Cause. A Husband accus'd of Frigidity, who pretends to have confummated Marriage an infinite number of times: Searchers who find him rightly form'd, but who plainly decide such Conformation to be inconclufive; and who, by their manner of reasoning, suggest, or in express Terms declare, that a Visitation of the Lady is necessary; a Wife, who avers she's a Virgin, who offers her felf to fuch Visitation, demands it, and puts the Issue of her Cause upon it; a Husband, in short, who opposes it, hinders it all he can, and pretends, against the formal Decision of the Searchers, that bare Conformation (or natural Shape of the Penis) ought to be decisive: From hence you fee, Gentlemen, will arise two Que-The First, Whether in general the Conformation of a Husband is a fufficient Rule to judge of his Capacity by? And whether, in particular, it can be sufficient, after the Searchers have declar'd it to be insufficient? The Second Question is, Whether

Mademoiselle de MASCRANNY. 15 ther supposing the Conformation of the Husband to be indecisive, we ought not to follow the Method which the Searchers have tacitly, or expressy mark'd out to you, and seek in the Person of the Wise, the Proof of the Frigidity which she taxes her Husband with, and which is the sole and only Foundation of her Suit.

#### First QUESTION.

I shall take care not to treat the Marquis's Proposition as a serious one: That would be doing it too great an Honour. I shall only say, that if it were valid, there wou'd be an end of the Tribe of Impotents: For there's scarce one of 'em, who is desective

in point of Conformation.

Conformation is only a Condition fine qua non, which proves indeed that every. thing is not wanting; but in Cases of Impotence, the Point is not, whether every thing be wanting, but whether there is not fomething wanting; and hereupon, there's a certain Principle in Physicks, to wit, that no Operation of Nature is perform'd without the Concurrence of Figure and Motion. Now 'tis no less certain, by Experience, that thefe two general Principles, Figure and Motion, do not always meet in one and the same Subject. There may be Figure without Motion, and Motion without Figure: Therefore 'tis very false

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If the Popes had reason'd thus, we had had no Chapters intituled de Frigidis & Maleficiatis. For tis certain, that those who are call'd Frigidi, are form'd like other Men; and this is still more indubitable with respect to those others who are nam'd Maleficiati, since their Operations are only sufpended by an Effect of Sorcery. Why are fo many Rules prescribed for discovering the Impotence of fuch fort of Persons, fince they have their Conformation entire, and fince, according to the Marquis's upftart Principle, Conformation is all in all? Furthermore: To what purpose all those Canons, those Glosses, those Doctors, those huge Volumes, whose sole Business it is to chalk out a Way to the Discovery of a conceal'd Impotence? All this is perfectly useles; fince, according to the foregoing Principle, there is no Impotence can be conceal'd, fo long as it confifts only in a bare Defect of Conformation, the Viciousness whereof is obvious at the first Glance of the Eye.

The Person who is spoken of in the last Law of the Cod. de repud. qui propter naturalem imbecilitatem per biennium coire minime valuit, was entire in his Conformation, since the Law does not reproach him with a Privation, but an Imbecility or Weakness of the Organ: And yet, as conformed as he was,

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The Person, who (in the said Novelle, sollow'd by the Chapter, Laudabilem & de Frigidis) is allow'd the Space of three Years for Probation, no doubt was persectly form'd; for there had been no need of solong a Trial to sound the Impotence of a disfigur'd Husband: Nor would they for solong a time have expos'd the Modesty of a Wife, to the brutal Attempts of a Monster, who had nothing of a Man, no, not the Figure. It is therefore true to say, that Impotence and Conformation do often meet in one and the same Subject; and, that therefore Conformation can't be a Proof exclusive of Impotence.

When the Chapter Proposuisti de Prob. requires that the Wife, who pretends her felf a Virgin, shall be visited, in order to judge of her Husband's Impotence, it doubtless supposes the Husband rightly form'd; for if he were otherwise, the sole visiting his Perfon would have been enough to convict him: And in that Case there had been no occasion to apply to the Wife's Body, for an Evidence which so ill sutes with Modefty: And for whose sake, I pray, was that Probation granted, that infamous Probation, and which, in our Days, has been fent back again beyond the Mountains? For whom was it invented, unless for such Impotents as were perfectly form'd? Wou'd they

they have put an imperfectly organised Man into the Lifts with a Woman? It is therefore true to fay, that a Man may bear unblamable Organisation, and yet be impotent. It not only may be; but frequent Examples shew it has been. Run over all the Decrees which have been made in Caufes of Impotence; and you'll find bur one Instance where Inability proceeded from a defective Formation. According to this, the Marriages of all the others ought to have been confirm'd, and Frigidity look'd upon as an imaginary reason for Impotence. Tis a thousand pities so rare a Doctrine did not fooner appear: It wou'd indeed have encouraged a great Number of monftrous and unnatural Concubinages; but there had been no more Impotents except to God-ward; and Men would never have heard 'em spoke of.

All this while I am not unsensible what you intend to urge. You fancy there's no means left for coming at an Insufficiency, fince the abolishing of the Probation I just now mentioned; but you are deceiv'd. Custom has preserv'd one Means, and that Means is what our Searchers have pointed our to us; and I'll make it appear in a Moment. At present what I have to say is this, That if you were to ask all the experienc'd Searchers in the World, they'll tell you, none of 'em ever trusted to bare Con-

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Mademoiselle de MASCRANNY. 19

formation only. Nor, indeed, is there any of them all but will at least demand, that the Husband shall animate that exterior Fiture which appears on him: And if the Husband refuses so to do, or attempts to do t without success, they will unanimously suspend their Judgment till they visit the

Wife, if the alledges the's a Virgin.

I have in my Bag a Copy of a Tryal for Insufficiency, wherein Mons. Facob, Counfellor of the Parliament of Burgundy, is Defendant: Never was Impotent better form'd. But because he could not shake off that deadness which attended his Organs, the Searchers pass'd no Judgment concerning his Person; nor was his Marriage dissolv'd for any other reason, but because, upon Search, his Wife was found to be a Virgin. The Decree pass'd by Mons. Grandin, Official of Paris, in 1664.

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I have likewise the Trial of the Sieur Verdin, of very recent Date; 'twas but of last Year, 1711. This Gentleman was not only advantageously form'd, but shew'd Signs of Life, which was more than the Marquis de Gesvres could do: And yet, because those Signs of Life were not adjude'd to be Signs of Health, the Searchers did not think fit to determine concerning him from the Inspection of his Person; so the Wife was visited, and appearing to be a Virgin, she was Un-married by Decree of

M.

M. de Fyan, Counfellor of the Parliament

of Burgundy, Official of Langres.

In M. Decombe's Book, you have a Petition from the Wife of Florent Cabu, for a Dissolution of Marriage on account of Infufficiency. There you'll find, that the Searchers had given a favourable Report of his Formation, and only objected to the Drowziness of his Parts: But because that Drowzines for two successive Visitation prov'd impossible to be stimulated, Caba was adjudged impotent. Tis true, he appealed from the Decree as tortious and abusive, and founded his Complaint upon the Official's not abiding by the favourable in Testimony which the Searchers had given of his Conformation; as likewife, that the I faid Searchers had required from him fuct Provocations as were scandalous and contrary to good Manners. But upon the up the fhot, it was determin'd against him, and the el Decree declar d not to be tortious or abusive

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You find likewise, in the same Book the Tryal of one Hubineau, who had for perfect a Formation, that the Searchers no knowing what to judge of him, found themselves obliged to propose a Visitation on the Wife: This being granted, and fhe appearing to be a Virgin, it was determin'd that there was no Marriage between them Upon this he appealed, as the other did but the Issue went against him in like

manner.

To conclude, look into the Second Tome f the Journal du Palais, and there you'll eti- and a Decree which was pronounc'd upon er a an Appeal from a Sentence of the Official In-f Rheims; there was nothing wanting in the he Husband's Formation, except, perhaps, port that one of the two Glandules which ferve the or Generation, was a little out of its Place, but that was no effential Vice, for every Body knows, that as much may be Cabi done with one of those Glandules as with ap both. So the first Report was for him; and but because when they came to make a sepor cond Report, they found he could not aniiver against him, and he was declar'd impotent. the In vain it was that he pretended he had fuct wrong done him in the Proceedings of the Searchers, who had founded his Virility at on Searchers, who had founded his Virility at up the expence of his Modesty. In vain upon the that Foundation did he Appeal as abus'd. By five Decree it was adjudg'd there was no Abuse.

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There's no Reason to doubt that our Searchers omitted to put the Marquis de Gefores to the same Proof; and if they have taken no Notice of it in their Report, 'tis because at Paris 'tis usual not to commit immodest Terms to writing, out of regard to Pudicity; but then 'tis only in writing they spareit, for at Paris, as well as in the Provinces, the Searchers never trust to a

dormant Conformation.

The pretention therefore of the Marquis de Gesores is alike contrary to the Principles of natural Philosophy and Reason; it is contrary to Experience, contrary to the Doctrine of the Canons; it is new and unheard of; this is the first Time it ever appear'd, and I hope will be the last; for it wou'd have very strange Consequences; it wou'd be adjudging that there's no fuch Thing as Impotency through Frigidity, or at least that Frigidity is impossible to be prov'd, which wou'd be overthrowing all the Canons at once.

But what I think to be most singular in the System of the Marquis de Gesures, is his going about to perswade you that simple Conformation is sufficient, whilst our Searchers affure you 'tis not. To expect that, against the express decision of the Masters of the Art, you should take upon you to be more knowing than they, in a Thing wherein it is a Virtue affixt to your Condition to be ignorant: This methinks is pushing ones Confidence to an excess beyond any Example. I shut up this Point, and am ev'n afraid I have faid more upon it than the Question deserv'd.

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#### Second QUESTION.

Now it is requifite I shou'd make appear, that fince bare Conformation decides nothing, according to the very decision of the Searchearchers, there remains but one way to er this Matter clear, and that is by having ny Client visited by Midwives, and they o report whether she's a Maid or no; pon which I shall have no need to expatite more than I did upon the first Question,

because the Maxims are certain.

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When an Infufficiency can be discover'd from the Body of the Husband, there's an end of the Matter. When the Body of the Husband affords nothing but doubts. and when the Searchers decide nothing, as in our Case, we proceed to visiting the Wife. 'I know 'twill be clamour'd against as an offensive Method, and that there are Physicians who hold it an uncertain one; but to talk fo, is to talk against the Church. which in all Ages has receiv'd and admitted it; witness the very Passages of St. Cyprian, St. Austin, and St. Ambrose, which are in the Mouths of every Impotent, and which the Marquis de Gesores will not fail to alledge, that he may not be thought of the Number.

The Proof of the Husband's Insufficiency by the Wife's Virginity, has not only been received by the Canons, but it may be faid that it was the only Proof the Canons admitted; for they never speak of the Visitation of the Husband; doubtless, because they know the Person of the Husband cannot be decisive, but where it offends

against

against natural Conformation; which very rarely happens. On the contrary, the Wife's Person is ever decisive; and there cannot be a stronger Argument than that which the Wife proposes, when she says to her Husband, The End of your marrying me was to make me pass from my maiden Condition, to that of a Wife; yet, after a long Cobabitation, after many Attempts and Endeavours, you have left me in the same Condition you found me in. Are you not therefore Insufficient?

This is what oblig'd the Popes and Legislators of the Church to place all the Force of the Proof in vifiting the Wife. We have, upon this occasion, the famous Chapter,

Proposuifti de probat. in these Terms.

\* Proposuisti quod causa matrimonii fuerit vobis de Mandato Apostolico delegato, cumq:

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<sup>\* &#</sup>x27;Tis a Pope who speaks to a Bishop: You have signified to us, that the Holy See having referr'd a matrimonial Cause to you, the Parties appear'd before you, and that in your Presence the Wife in form'd against the Husband, that he never had done nor was able to do the Part of a Husband by her which she prov'd not only by her Oath, but by the Report of feven Matrons, who having inspected he Body, testify the's still a Virgin, whilst the Husband deposes to the contrary. And as you thought fit to proceed no further in the Affair, without confulting us, we are of Opinion, that the Wife's Oath, firenthened by the Report of feven Matrons, who found her a Virgin, after a Visitation had, ought to be of more Weight and Credit than the Husband's Oath.

Mademoiselle de MASCRANNY. 25

danes effent in vestra præsentia constitutæ, mulier proposuit, se nec a vito cognitam, nec ognosci potnisse; quod tam juramento quam testisonio septem mulierum probavit, que per exerientiam affeverant mulierem adbuc virgiem effe, viro autem per juramentum fuum, ontrarium afferente, vos in negotio procedere ninime volnistis, donec super boc nostrum conilium baberetis, videtur igitur nobis quad juranento puella & testimonio illarum septem mulirum, quæ ipsam per experientiam virginem affeverant, fides est potius adbibenda.

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Here, Gentlemen, you see a Wife pre-ending her self a Virgin; a Husband who or his part affirms he has confummated Marriage, viro per juramentum faum contraium asserente: This Wife, you see, makes contrary Oath, and to Support the Truth f her Affirmation, or to destroy that of er Husband, makes use of a Report of Matrons, who after visiting her, declare, ne's still a Virgin. To conclude, you see he Church, upon the whole, determines hat the Wife's Oath seconded by the Maons Report ought to prevail against the Jusband's Oath: Videtur igitur nobis quod ramento puellæ, and so on. I ask, If this is ot our very Cafe?

It is not in this Chapter only but in vo others, viz. Chapter caufam in the me Title de probat. and the last Chapter frigid. where the Church authorizes the

Proof

Proof of the Wife's Virginity, when the Question is about Consummation. Therefore it can't be deny'd that the Proof I demand is Canonical, nay, the only Canonical

nical Proof, as I before observ'd.

If, after this, I shou'd attempt to enumerate all the Glosses, all the Doctors, and all the Decisions of the Rota, which suppose, as an unquestionable Principle, that the Wife's Virginity, in Cases of Insufficiency, affords a superior Proof, I shou'd never have done in the Would be loading this Cause with a very burthensome and useless Heap, because the Rule being manifest from the Texts I quoted, all that remains to be known, is, Whether those Texts are still in use; and of this you are too well apprized, to be inform'd of it by me.

You see already 'tis the only kind of Proof that is preserved and can be put in practice, when the Husband's Person does not afford sufficient light to the Searchers Therefore 'tis impossible the Custom or Use of it shou'd be lost; for special Proofs are never lost; and if they were lost, they ought to be restor'd; but the Proof now in hand is very far from being lost; since the Decrees of these latter Times, and the daily Practice of all the Bishops Courts in Franchave, as it were, made it a beaten and

common Road.

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In the 10th Chapter of the 4th Book of Master Anne Robert, you find the Question treated at large. Whatever the most vehe ment Declaimer can possibly propose, of the strongest Nature, either with respect to the Turpitude, or with respect to the Uncertainty of that Kind of Proof, is there difplay'd with all the Pomp, and all the Force imaginable. And yet the Parliament of Paris did not suffer themselves to be dazled by that mighty Train of rhetorical Artillery; fince notwithstanding all the Endeavours of an excellent Orator, they were of Opinion there was no Abuse or Wrong done in the Sentence of the Court which had order'd the Visitation of the Wife.

In the Beginning of the 4th Book des Actions Forenses of Peleus, you have the Marriage of a Chirurgeon of Rochelle, declar'd null upon the Foundation of Virginity's being certify'd in the Person of the Wife, by

a Report of Searchers.

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In the 1st Tome of Safe, Cent. 2. cap. 93. you find two Parties freed from Marriage, by a Sentence of the Official of Troyes, and the Sentence grounded upon two Reports of Visitation; one of the Husband, and the other of the Wife; you see likewise that Sentence attack'd by an Appeal as for Wrong done; and upon the Appeal, a Decree declaring no Wrong done.

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In the 2d Tome of the same Author, Cent. 4. cap. 86. is reported a Decree with the Pleading of the Advocate General Lamoignon, where that great Man, whose Wisdom and bright Parts will live for ever in our Memories, blames the Official of Contance, for having order'd Congress, before he had try'd to clear up the Truth by visiting the Wife. He afterwards traces out the Order which is to be observed in Causes of Insufficiency; and he makes the same entirely to confift in fearching the Husband first, and Wife afterwards.

This shews that in the Days when Congress was allow'd of, they us'd to feek in the Wife's Person, the Proofs of the Husband's Insufficiency. And indeed the Author of the Journal du Palais informs us, That the Sieur and Dame de Langeuis were each visited apart, before they were put to encounter each other. Now if the vifiting the Wife was practis'd before the Abolition of the Congress, ought there to be any Scruple of having recourse to it now when the Truth is become inaccessible to us by

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any other Method?

In the Affair of M. Facob Counsellor of the Parliament of Burgundy before-mention'd, the Insufficiency of the Husband, which feem'd doubtful to the Searchers, because of a good Formation, was not clear'd up but by inspecting the Wife; and the Cafe

Mademoiselle de MASCRANNY. 29
Case was the same with respect to the Sieur Verdin, whom I likewise took notice of before.

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In short, if we cast our Eyes on the Book. of Decombes, we shall find that of late you have order'd many Inspections of the same Nature with that I ask of you. All your Sentences have been executed, and in the Iffue fuch Wives as appear'd to be Virgins, were fer free from Marriage-Bonds; as onthe contrary, those who were not found to be fuch, have miscarry'd in their Demands to be so freed. It would therefore argue an ignorance in things, to go about to passthis Practice for a Mode of the old Times; on the contrary I may fay with Confidence that it has obtained not only in all Times bur Countries too, and that the Parliaments of France have authoriz'd it. Despeisses, Part 1. Title of Contracts, Sect. 4. No. 3. is a good Testimony to us for the Parliament of Toulouze. Basset, Tom. 1. Lib. 4. Tit. 8. cap. 4. affures us the same thing for Dauphine; and as for Provence, we need only look on Bonifacius, Tom. I. Lib. 5. Tit. 6. cap. 2.

I don't see after this what can be said on the general Thesis; and if from hence I descend to the Hypothesis, and cast my Eyes on the Particularities of this Affair, I not only not find any thing that makes against Verification by Virginity, but I find

C 3 nothing:

nothing but what conducts to it and shews

the Necessity of it.

First, The Searchers who have visited the Marquis de Gefores, have all formally declar'd to you, that his Person was an Enigma, which they cou'd make nothing of; and that therefore there was a Necessity of looking elsewhere for an Explication to that Anigma. Now 'tis certain, in these Matters, the Husband can't be fuch a Cypher but that the Wife may find a Key to it. Those therefore who present you this Key, and those who say the Key is not in the Husband, say one and the same thing: Consequently, to refuse the Key which the one presents to you, and which the others tacitly point out to you, is all one as if you shou'd fay, we will neither open nor enter.

In the Second Place, It is not without Reason, that of the four Searchers two have as it were led you by the Hand to the Proof which I offer to make, whilst the other two have told you, without any more ado, That's the Road you're to follow. They had all four seen by the Interrogatories that the Marquis de Gesores pretended he had enjoy'd his Wise an infinite Number of Times, and that my Client on the contrary had averr'd that those pretended Enjoyments were nothing but idle empty Endeavours; they thereby perceiv'd that the whole

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Mademoiselle de MASCRANNY. 31

whole of the Question was whether the Marquisses Endeavours were empty and ruitless thro' a Defect in Nature, or wheher he fully compleated his Enterprize. Now the Difficulty thus reduc'd, wou'd be nfallibly decided by inspecting the Wife; or if the Operations of the Husband, had been so frequent, so full and so entire as he Marquis would have 'em to be, they must occasion an Alteration in the Body of his Wife. If on the contrary; he went no further than bare Attempts without Effect, no Alteration cou'd enfue. Thus the Ratio

of deciding was to be in the Wife and no

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And herein, Gentlemen, I may fay the Searchers have reason'd like Canonists. For it is very certain that to give to a Wife's Virginity a Forcibleness of Proof against a Husband's Insufficiency, it is absolutely requisite, (as says the Gloss upon Chapter laudabilem,) for the married Couple to endeavour to make themselves one and the fame Flesh. Debent dare operam carnali operi. [They ought to apply themselves to Consummation.] Now the Marquis who fays he has confummated fo many times, has therefore. apply'd himself to Consummation; and this appears too from the Facts urg'd against him by my Client. For if it be true, as the fays, that the Exploits of the Marquis ended in bare Offers, it is likewife true, C 4 accordaccording to her, that the Marquis did dare operam carnali operi; consequently we are in every respect in that Case wherein the inspecting the Wife ought to carry the Decifion.

And I have the more reason, Gentlemen, to hope you will be of the same Opinion, in as much as you have already prejudg'd it, when before you came to a Refolution upon our Request tending to visit our Person, you order'd that the Marquis shou'd be first inspected. For you thereby fhew'd plain enough that if the inspecting bis Person did not yield a sufficient Elucidation, there wou'd be then occasion to

visit my Client.

And herein Conslemen To conclude, Nothing ought to make you more forward to order this Visitation, than the Opposition which the Marquis makes to it: And to make you sensible of the Proposition, permit me, Gentlemen, to argue according to the two different Hypotheses of the Parties. First let us suppose, with the Marquis de Gefores, that his Love-Exploits are without Number; Is it likely he wou'd hinder all these glorious Trophies to be made publick? And does it not look like Madness to oppose it so warmly? On the other hand is the Madness less great on my Client's fide, who knows that fuch a Visitation will, according to that Hypothesis, overwhelm her with Confusion, and fink -tropps

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ink her to the saddest Condition she can cossibly fall into? And indeed, in reasoning coording to this Supposition, methinks the arties don't so much want Guardians as Idministrators for Lunacy: For in short, ach is acting the Part of its Adversary. My Client who shou'd dread a Visitation nore than Death, is the first to offer her elf to it: Nay, to demand it! And the Marquis de Geswer, who shou'd wish for nothing so much, is the first to oppose it.

This makes me say that this Hypothesis must needs be salse, and that the only true one is that both Parties are alike Virgins. When I argue according to this System, I find that, together with Virginity, both Parties recover their Reason, which the contrary Hypothesis deprives them of: For in this Case, mine acts a wise Part, since being sure of her Virginity, she runs no rick in offering a Proof of it, and since to such Proof Victory is affixed: As on the other side, the Marquis likewise acts very prudently, to oppose all he can such a Visitation, since the Event of it wou'd be equally satal to both his Honour and his Fortune.

I believe, Gentlemen, I have said enough in Desence of my Cause. I shou'd be very glad to hear what Answer the other Side will make: For I own I can't guess it; and after I have turn'd my self on every side I can't comprehend how 'tis possible to main-

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tain the Cause of an impotent Husband who has no manner of Proof whatever to clear him of Insufficiency but his Oath, whilst his Wife offers to bring Evidence of the contrary, and whilft the Searchers wish or require such Evidence: This is what oblig'd me to change my Plan. I began by treating this Affair at large: But I thought if I made use of so many Words to defend it, all the Fruit I should reap from my Labour, wou'd be weakning the Certainty of my Propositions: Therefore I conclude, &c.

one is that been Parties are neithed breens. M. BEGON, Counsellor.

BENARD, Attorney.

Since this Plea, the Marquis de Gesvres has spent three Hearings in answering it. All his Objections shall be reply'd to without either Delay or Difficulty. The right of the slopes of what

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## REPLICATION.

For Lady MARY MAGDALEN EMILIA MASCRANNI;

Against the Marquis de Gesvres.

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THEN a Husband who is accus'd of Impotency, is necessitated to build his Defence upon these three Propositions, that there is no fuch thing as Impotency thro' Frigidiy; that if there were, the Proof of Frigidity wou'd become impossible: that even tho' it were possible, it ought ne'er the less to be rejected, because the Complaints for Insufficiency took Rise from nothing but the Corruption of the latter Ages; when, I Tay, a Husband attainted of Impotency, is reduc'd to take Shelter under one of these three Propositions, 'tis plain what he intends by it; one may see with half an Eye, that as he sets himself up for Advocate General of the whole Body of Impotents, so he owns.

unwittingly, that he himself is one of the

But if this Doctrine is likely to surprize as, the necessary Steps for establishing it, is what may much more justly challenge our Admiration. As it was impossible to plant these new Dogma's, without rooting up all the Laws of the Church, fo they of the other fide have made no Scruple of attempting it: Thus if we will take the Marquis de Gefore's Word for't, we have no longer any fuch things as Canons, Decretals, Gloffes, Doctors. The Canons are but Apochryphal Pieces, the Decretals meer Notions fprung from the Fantastic Brains of the Popes, which the Church never regarded, the Gloffes a Heap of Nonfense, the Writings of the Doctors fick Mens Dreams: Witness, say they, what Petrone said to them; Pace veftra liceat dixisse vos primi jus Canonicum perdidiftis.

In truth, Gentlemen, when I fancy my felf in the midst of all these demolish'd Authorities, and see arising from their Ruins, a Law that savours Impotency, I can't help crying out, what a rare thing is Necessity, what Courage will it not inspire, and what Impossibilities will it not attempt? In calum justeris ibit. But after all, as the Marquis's Enterprize bears a very near Resemblance to that of the Giants who scal'd the Skies, so I believe all he will get by't,

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Mademoiselle de MASCRANNY. 37 will be the Glory of falling from a great leight.

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Our whole Controversy turns upon two oints. Does the Figure of a Man, make he Man? If it does not, must we look for he Proof of the Man in the Person of the Voman, or must we not?

We shall treat this in its two Branches. But first, 'tis fitting to strengthen some ruths against the rash Attacks that have een aim'd at them.

Complaints for Impotency, fay they, were never heard of for the first twelve Ages of the Church. They sprung merely rom that impure Source of Corruption, which the Church was over-run with in its atter Age; and if we wou'd recal the Gollen Age, we must exterminate them, bury hem in the same Grave with the Contress.

Tho' this Proposition is unworthy of an Answer, it gives Occasion to demonstrate now antient a Practice it has been in the Church, to sue out Divorces on account of insufficiency; how unmovable the Foundations thereof are, and how impossible it were to save the Honour and Conscience of Women, if their Union with the Impotent form'd indissoluble Bonds.

It is certain, that if Matrimony be a Satrament, 'tis only so far so as 'tis the Figure and Representation of the Union between

tween Jesus Christ and the Church. For the Word Sacrament fignifies only a Mystery or facred Sign: As therefore Jesus Christ and the Church make but one Body, of which Christ is the Head, so the two Spoules ought to compole but one Flesh, of which it belongs to the Husband to be Chief. Now 'tis certain nothing but Confummation melts them, or rather identifies them in one and the same Flesh; therefore when one of them is incapable of confummating, there's an End of the Union, Re-presentative of that between Jesus Christ and the Church: for fuch Union being thereby depriv'd of the Character of a sacred Sign, it becomes destitute of the Virtue and Indisfolubility of a Sacrament. This is not my Reasoning, 'tis Pope Innocent the Third's, in the Chap. Debitum de Biga.

For this Reason the Theologists and Canonists make the Essence of Matrimony to consist in a reciprocal Delivery, or, as the Doctors call it, Tradition, which the married Couple ought to make of each other's Bodies, if not in an actual Tradition, at least in the Possibility of such Tradition; whence it follows, that where Tradition is impossible, there is no more than the Shadow of a Sacrament, there is no real Sacrament. All which is founded upon St. Paul's Doctrine, which is well known to every

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Now if the most evident Principles of Theology authorize a Diffolution of Marriage with an Impotent, the Calls of Conscience require it as a necessary Remedy? You know the Reasons, Gentlemen : You know to what Trials is expos'd the Modesty of a Woman ty'd to a sham Husband; you can't be ignorant what cruel Affanles she has to fuftain, and how difficult it is for the lifeless Image of a Husband not to kindle in her that impure Fire which only burnsto What shall I say of the Danger her Pudicity runs, and the continual Alarms she's in for her Life? 'Tis notorious to what Extravagancies the Rage of a Fumbler is capable of carrying him, when he finds that Nature withdraws her felf from his Efforts: 'Tis also notorious from th' Example of a King of Castile, that these impersect Men feek to wash away their own Shame in the Crime of another; that they purchase the Reputation of a Father at the Expence of the Honour of the Nuptial Sheets, and turn Panders of those Women, to whom they can't perform the part of Husbands. This King of Castile is not the only Person who was guilty of that infamous Piece of Policy, many have done the like. And for thefe Reasons it is that the Discipline of the Tribunals of Penance do not permit the Wife to keep filence in fuch Conjunctures: She is forc'd by the Refusal of the Application of of the Blood of Jesus Christ, to implore the Authority of the Church to break, not the Tye, but the Appearance of the Tye, which fastens her to the Uncapable, and who is to her a continual Source of Scandal and Disorder: My Client can speak knowingly of this Maxim of the Confessional. How is it possible in the midst of all these Truths, to look upon the Complaints for Impotency, as the Effects of the Corruption of Morals, and Remissies of Discipline? I think I may say, 'tis one of the most inconsiderate Propositions that was ever advanced.

I own, that in the fix first Ages of the Church, we don't find the Prelates Ears teaz'd with such fort of Questions; but that is no matter of Amazement. The Arbitrary Divorce, which, tho' condemn'd by the Ecclesiastical Laws, was however authoriz'd by the Civil Laws, assorbed always a ready Help, to put a Stop to the Abuse of a scandalous Co-habitation. The Wife well knew by what means to merit a Libel of Divorce, and the insufficient Husband to whom a Wife was burthensome, knew as well how to get rid of her with Ease; thus Separations were made without Noise or Bustle.

But Justinian had no fooner abolish'd the Licence of Arbitrary Divorces, he had no sooner shut up within very narrow Bounds

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the Power which the Husband had to free himself from his Wife, but he was oblig'd to allow of Divorce to the Wife, in case the Husband was Impotent. This he did by Law 10, in Code De Repud; and by Cap. 6. of Novelle 22. So that the same instant of him, wherein the Liberty of Divorcement was almost annihilated, the Women were likewise authorized to complain of their

Husband's Insufficiency.

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The Church which beheld this Discipline introduc'd by the Civil Laws, put thereto the Seal of her Authority. We find two Canonsof Gregory I. surnam'd the Great, and who does indeed recommend Continency to both Parties, when one of them proves incapacitated; but who for all that permits the Person, who is not so to sue out a Divorce, and proceed to a new Marriage. These are the Canons, Quad autem & Requisit; this last is certainly St. Gregory's, since it is taken out of his Epistle to Augustin, the Apostle of England, and afterwards a Martyr. Now St. Gregory was made Pope toward the End of the 6th Century.

Gregory II. who came to the Papacy in 714, follow'd his Predecessor's Spirit, in a Decretal which now composes the Canon, Quod Proposuisti. He exhorted the Husband of an ill-organiz'd Wife, to turn the conjugal Life into a fraternal one, but knowing that every Body has not the Gift of Con-

tinency,

tinency, he concludes his Discourse with these Words; Sed quia boc magnorum est, se

non potest se continere, nubat.

The same thing which he allow'd to the Husband of a disabled Wife, he likewise allow'd to the Wife of an uncapable Husband; and it is from another of his Decretals, from whence were drawn the Texts, which we at this Day fee upon that Subject, in the Capitularies of Charlemagne, and Lewis the Debonnaire, where a Diffolution of Marriage for Insufficiency is warranted as just and conformable to the Laws of the Canonsol Gregory L. lurman'd the G. darud

Before the Capitularies, the 17th Canon of the Council of Verberie, held in 752, in Presence of King Pepin, had permitted the Wife to fue out a Divorce from an unable Husband; this is to be found in the 10th Vol. of Father L'abbe's Edition; it is likewise in the Chap. 242, and 243, de Regin. See likewife upon this Occasion, the 64th Letter of Fulbert, who liv'd Anno 1000, with the Texts compil'd by Yves de Chartres, in Chap. 178, of the 8th Part of his Decree.

All these antient Monuments make it evident, that the Marquis de Gesores, by placing in the 17th Age the Laws of the Church, which authorize Accusations for Impotency, falls into an Anachronism of only 600 Years, one languard worm chi i las

that every Body has not the Gift of Con-

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We see that the Popes exhorted the Husbands to Continency, when the Imperfection happen'd to be on the fide of the Wife; but we don't find that they exacted from the Wives that high Degree of Virtue, when he Fault lay in the Husband; nay, the Exnortations which they made to the Hus-, ands, were not always taken for Precepts out simply for Counsel. It is for Example aid in Chap. Consultationi de Frigid. Romana amen Ecclesia consue vit judicare, ut quas tanquam uxores babere non possunt, babeant ut soroes. But upon this Text the Gloss makes his Remark, Ibi Papa non præcipit, sed consiium est. It is nothing but a piece of Advice. which the Pape gives; but this Advice prov'd ipon Experience fo dangerous to be folow'd, that tis no longer tolerated by the Directors of Consciences. "And indeed the Union of a Woman, with an impotent Man, is neither less criminal, nor less conrary to Nature, than the Union of two Persons of one and the same Sex.

Since therefore a fuing for a Divorce, is the only Remedy that can ftop the Course of so many monstrous Brutalities, and of so great a Number of Profanations, it is necessary that the Church shou'd prescribe Rules for coming at the Discovery of conceal'd Impotency Now the first of those Rules is, that since the Ministers of the Church can't decide such Questions of themselves,

they

they are oblig'd to borrow the Eyes of Physicians, Chirurgions, sometimes Matrons and Midwives; in a word, of the Masters of Art, who are call'd Experti

Wives that bigh Degree of

These are not like bare Witnesses, con fin'd to give an account of only what they find by the Perception of their Senfes. They are Experii; that is, People of Capacity and Experience, who ought, not only to give their Decision, but likewise to super-add a solid Rationale, groundedupon the Rulesand Principles of their Arr. Therefore when the Marquis de Gesores is for having 'em be nothing but Judges of Fact, and not Judges of Reflections, he is greatly deceiv'd, if by thole co almost unintelligible Terms, he means that vi our Experti were only to number and meafure his Organs without any Power to judge of their Value, this is reducing the Office of Experti, to the Function of simple Witnesses; tis taking from them the Quality of Experti. Persons of one and the same Sun.

They were in the right therefore, may, they were oblig'd to found the Value, as well as examine the Number, Figure, and Dimensions of the Organs, and this twofold

Duty is what they have discharg'd.

As to Number, Figure, and Dimensions, they find em right in the Person of the Marquis de Geswes; but then the utmost Advantage which they grant him, is a re-

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Mademoiselle de MASCRANNY. 45

wisite Configuration; nothing beyond. For to the good and laudable Conformation, it is Present he makes to himself, out of his bundant Liberality, and without the Conurrence of the Searchers. A good Conormation imports Solidity and wholeome Temperature of Substance, which Configuration does not. : notating 1900 ni

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The same may be said of the perfect boily Plight. The Marquis gives us Security or the Solvability of his Configuration; n indifferent Security, fince it wants the Confirmation of the Searchers! But, fays e, the Advantages I have receiv'd from Vature are visible, Corpulence, fine Skin, fresh lolour; and by this we must judge of that what we don't see. O formose puer nimium nease crede colori: O lovely Boy, presume not iean thy Colour. What Tricks are practis'd e of the Affair of Complexion, we all know: nd as for Bulkiness of Body, that may et more easily be counterfeited; so look ut for other Certifiers.

This being taken for granted, all that ne Marquis de Gesvres can pretend to, is pass for a Man requisitely figured; and nen it remains to be feen what Confequence e can draw from his Configuration. But efore we hear him speak upon that Conguration, 'tis necessary to know what

udgment the Searchers made of it.

They

They have unanimously declar'd, that Configuration is not sufficient, say two of them, to judge concerning the Consummation of Marriage. To establish, says the other, the Virility and Power of the Marquis de Gesvres Here you have an unanimous Decision of four Masters of the Art; no Trust to be put in Configuration; 'tis a deceivable Sign

and concludes nothing, ad ware amaled I

For all this, I hear the Marquis de Gescric clamouring against this Decision, and saying to the Searchers; Fools, Sots, know yenot that Configuration does all? How dare you blaspheme against Nature, and accuse her of making so fair a Structure is vain! Learn that Nature forms nothing unprofitable; and since she has given me the outward Furniture of a Man, 'tis none o your Business to raise Doubts, whether of no she has deny'd me the Efficacy and Power.

This then is the first Question that arise between the Searchers and us on the one side, and the Marquis de Gesures on the orther. For I must observe to you, that my Cause is inseparable from that of the Searchers. If I maintain that Configuration proves nothing, I do but maintain it after the Searchers; if I demand the visiting out Person, I demand no more than what the Searchers have done, as a thing necessary On the contrary, the Marquis de Gesure

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Mademoiselle de MASCRANNY. 47

finds the Searchers continually in his way; from whence it comes, that after having thankt them for granting him Configuration, he creats them as rash, superstitious, prying Coxcombs who are for forcing Nature in ber inmost Retrenchments and on a ton a

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In these Circumstances I ask, not him but his Defenders: Is it possible that you who have frent so much time in studying the Discipline of the Church, and have confumed your felf in diving into Ecclefiaftick Antiquity to that degree as to fetch up Secrets which are known to none but your selves? Is it possible, I say, that you shou'd erect your selves Censors of four Physicians or Chirurgeons, each of them eminent for their Capacity, and among whom there are some whose Names are very famous? Indeed, when I confider this Prefumption, I ask my felf, is not all this which I've heard a Dream, have not my Ears deceiv'd me?

But, independently of the Authority of the Searchers, let's examine in the first Place, Whether, in general, Configuration is sufficient to purge away all Suspicion of Impotency; and in the fecond Place, What Consequence the Marquis can draw from his Configuration in Aid of his present

Averment.

He blames the Searchers for not paying Deference to the exterior Figure they found in

in him; and for me, I say that if they had paid Deference to it, they had fall'n into the most fignal Extravagance human Wit is capable of, and I prove my Proposition thus.

'Tis not Impotency in general of which I accused the Marquis; 'tis in particular an Impotency of Frigidity which I imputed to him. For 'twas thus I characteriz'd his Imperfection in the Facts which I exhibited to him in order to be interrogated. You did by your Sentence of April 20. propose these Facts to the Searchers, as the determinative Title of Impotency, which ought to be the Object of their Inquiries, and they found therein from the Beginning to the End nothing but a Frigidity compleatly specify'd throughout, that is to say, an absolute Privation of the Motive Faculty: For that's the true Character of Frigidity: Witness that Definition taught by last Chapter de Frigid. Frigidus is censetur qui licet babeat Membrum, babet tamen inutile ad copulam, quia inerigibile, quod melius facto potest inspici, quam verbis exprimi.

I defire no more than this Definition to Thew that our Searchers cou'd not without being out of their Wits determine in Fayour of the Configuration of the Marquis de Gesvres accus'd of Frigidity. Indeed a frigid Man is figur'd, babet membrum; but 'tis to no purpose how he's figur'd, babet

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membrum sed inutile ad Copulam. And why does that Figure serve him to no Use? Quia enerigibilis; 'tis good for nothing, because 'tis as 'twere dead; it sleeps a Sleep of Iron, olli dura quies nervos affereus urget somnus; that is to say, it wants that motive

Faculty, which is the Life of it.

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Now, is it not upon this Foundation that our Searchers have difallowed of the Marquis's Configuration? The first, that is, those he nominated, have they not faid that the Reason why they distrusted it, was, because they found it asleep? But because, say they, These Conditions are not sufficient to judge of the Consummation of Marriage without Motion, and fo on, which we faw nothing of in the Person of the Marquis de Gesvres, &c. This is their Principle, and as for the two others nominated by us, do they not argue in the like manner, after having faid as the former, that those Conditions are not sufficient. i. e. that Configuration is infufficient, to effablish the Virility and Power of the Marquis de Gesvres; do they not add, that to find out whether be be capable of doing the Duties of his Condition, be ought to shew Tokens of Motion? s not this the Fundamental Proposition ouilt upon the Definition of Frigidity just now quoted? which if lo, can it be conradicted? Further, it appears from this Defiition, that Frigidity is nothing but a Conguration, naturally and habitually cold. Now

Now admitting this Principle, cou'd any Extravagance have been comparable to that of the Searchers if they had reason'd thus? We know that Frigidity is a Configuration, doom'd to a perpetual Coldness: We find a Configuration upon him: therefore we cannot find a Coldness. Wou'd not this be just as if they shou'd say, We know that the Palse is a Deadness of the Members: We find here Members; therefore 'tis impossible we should find any Palsie. Upon the whole, this Principle of Configurations being sufficient, is a Principle invented for the Caule of the Marquis de Gesures; for this is all that's exquisite in his Defence: Nothing is borrow'd; 'tis all the pure Effect of Mother-wit.

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Actually, all who have treated of Impotence, Physicians and others, agree in this Principle, that there's no grounding a Judgment in Favour of the Husband, upon a Configuration attended with a Lethargy, and that on the contrary, fuch Lethargy was the charactenistic Sign of Impotency, tertium signum impotentia, says Zachias, Book ? cap. 2. Est membri quamvis optime conformati flacciditas quadam, & inexcitabilis mollities If the most excellent Conformation may be bury'd in a Death-like Sleep, as Zachias in timates by thefe Words, Membri quampis of time conformati flasciditas, what will betide o the require Gonformation? Can it be look upor WOM

Mademoiselle de MASCRANNY. 51 upon as a Proof exclusive of all Frigidity?

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Besides Zachias, who has spoken of Imporency more like a Physician than a Lawyer, we have two celebrated Authors, who have treated this Matter as Canonifts. Thefe two are Vincent Tagareau, and Ant. Hotman. Read the 5th and 6th Chap of the former, and all the little Book of the latter, you'll find in every Page this Principle laid down for a Fundamental, that the goodlieft Conformation in the World concludes nothing, unless it appears to be enliven'd : You'll find that in all times the Searchers trufted not in the Idel of a Man, but prick'd the Phantom, to discover whether it had feeling of not. Horman tells us, pag. 227, that Men of Art have Methods to try the Sensibility of the Husband's Organization, and by an Expression of Hoftiensis, quoted by Tagareau, one may guess wherein those Methods confisted. Debent, says Hostiensis, speaking of Searchers, inspicere utrum homo moveatur ad tibidinem.

The Truth of this is confirm'd by this Expression, of Præpositus, quod melius facto potest inspici quam verbis exprimi; for this Term facto, visibly means the Trial, which the Searchers make when they put the Husband's Organs to the Test; 'tis likewise confirm'd by this of Zachias; inexcitabilis mollities; for there's no judging that it is inexcitabilis.

D 2 tabilis.

tabilis, unless it has been excitata: and in fhort, it is confirm'd by the notorious Practice of all the Officialites in France, Such Gentlemen as are often delegated upon these fort of Questions, know that all the Reports of Searchers contain a Relation of the Success, whether good or bad, which their Stimulatings have met with. Of this I produce a very home Example in the Person of the Sieur Verdin, un-married for Insufficiency, by a Sentence of the Official of Langres, last Year, 1711. The Report of the Searchers in that Case, (as appears from an authentic Copy thereof) contains a very exact and full Relation of all the fruitless Attempts which the Sieur Verdin made upon himself, in order to raise a Fire from some few fleeping Sparks under the Embers. I likewise shew from the Example of Monfieur Jacob, that in 1664, the same Method was practis'd in that Officiality: a Copy of the Searchers Report in that Case, we have ple likewife at hand to produce. The Paris tha Searchers have perhaps of late Years conceiv'd it proper to forbear Indecencies upon och Paper, but they are ne'er the more reserv'd ati in the Act of Visitation. They bring the I Husband to the Test, as of old, and accor-Sear dingly pass or suspend their Judgment con-whi cerning his Person. ix R renns to the

Now, whether this Practice is agreeable pand to the Purity requir'd by our holy Religion, ng

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is none of my Business to declare; I am here before my Mafters : I shall not presume to enter into the Secrets of Theology; they are too deep for me. All I can fay is, that the Practice now in debate, may be justified by this Principle of St. Thomas, which afterwards was embrac'd by other holy Doctors; to wit, that the Actions which tend most to Impurity, are no otherwise Crimes, but in proportion as they proceed from a lascivious Motive, in quantum ex luxuria procedunt; a Motive which can't be attributed to him, who only feeks to instruct the Church in a Matter of Fact, to the end that the Church may be capable of deciding (if I may so say) the Doom of a great Sacrament. Be that as it will, 'tis enough for me that the Custom is Custom; 'tis the Bufiness of the Theologists to justify it, and I'm nod no Theologist.

of But, you'll fay, you flew by fix Examave ples, by fix different Reports of Searchers, aris that several Husbands have been adjudg'd con-capable of discharging the Duties of Wedpon ock, on the fole Credit of their Configu-

rv'd ration. the I must answer you at once, that since the cor-con-which they don't write down; what your ix Reports prove, is not that those six Husable pands were admitted Mafters without flewgion, ng a Sample. All the Confequence that

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can be drawn therefrom is, that they flood the Proofs they were put to, and came off with Honour TBue L have particular Anfwers, which clench the Matter yet closer

than the general Answer, won solf my on

The Fallacy of your Examples confifts in your producing nothing but the Reports, and cunningly suppressing the Interrogatories and other Piecesy which wou'd lose you the Fruit of your glorious Discovery; twas prudently done, but the Care I have taken to get Copies of those Interrogatories will

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disappoint your Prudence.

med on benich The first of the fix Reports which you alledge, is in the Cafe of a very imperied Frigidity. You know, Gentlemen, that the Operation of Manis distinguished into three Degrees. As the ufual Terms for expreffing these three Degrees are grown filthy by long using them, I shall substitute in their stead those of Motion, Penetration, and Expulsion. The Wife, in this particular Case, granted to the Husband, the two first Degrees; and only disputed him the third. Now this being fo, I ask to what purpose should the Searchers require from that Husband, Acts of the motive Faculty, when the Wife confess'd she had experienc'd them, and that all the pretended her Husband wanted, was a fecret Faculty, which can't without a Crime be render'd sensible by its Effects

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I add, that in this Cause the Wife own'd that the Evidences of her Virginity no longer sublisted, whether that the Operation of the Husband had destroy'd part of 'em, or whether he had remov'd the rest by indirect Means; in short, both the Interrogatories prov'd rather an Impotency thro' Wirchcraft, than a true Impotency; by Impotency thro' Witchcraft, I mean that which is caus'd by a certain capricious Aversion, which happens sometimes between two marry'd People, and which renders them intolerable to each other. For, other fort of Witchcraft, is very rare. In these Circumstances the Official order'd a Co-habieation for three Years, and with some Shew of Reason: For besides, that trienmal Co: habitation is proper only in cafe of Witchcraft, there was no great Hurt done in puting again into a Husband's Hands, a Wife who no longer pretended to Virginity. When the Titles of Virginity are entire, it were putting them into the Hands of an Enemy, to commit the Wife to the Husband; but when they are effaced, there is then no need of fuch Caution, and all the Malice of the Husband can't take from the Wife what the has once loft.

The fecond Report is in the Case of a Widow twice marry'd, who accus'd her second Husband of Impotency, but without being able to determine what fort of

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Impotency it was she imputed to him: All that the Official cou'd get out of her upon interrogating was, that the Operations of the second Husband were not like those of the first. In these Circumstances the Searchers who saw the Husband well organiz'd (save some slight Desects) judg'd that he was only comparatively impotent, and that all his Crime consisted in not being so robust as his Predecessor. So they gave it for him, and their Opinion was

follow'd by a Sentence,

The third Example is in the Case of a Husband accus'd of Impotency after a Month's Marriage: The Searchers found in him an excellent Conformation both of the whole Body (in general) and (in particular) of the internal Parts destin'd for the Consummation of Matrimony. How cou'd they judge of the good Disposition of the internal Parts, if the Excellence of the Interior did not exhibit it self outwardly by sensible Marks? And what cou'd those Marks be, but such as did not appear in the Marquis de Gesures when he was visited.

The fourth Example is in the Case of a Husband who wanted no Motion, but whose Vice consisted in a too prompt Precipitancy, which caus'd the Sperm to fly off before its time. The Searchers come and visit him, and finding him well condi-

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mademoiselle de Mascranny. 57 tion'd in all respects, are of Opinion that that Vice is it were one, does not form a radical and incurable Impotency. They say that such an Impersection is not beyond the Skill of Physick to amend; upon this

Foundation they declare him a Husband, and thereupon follow'd a Sentence. Is

there any Similitude between that Cale

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The fifth Example is in the Case of a collusory Accusation preceded by seven Years Marriage. The Wife alledg'd in general that the Husband was impotent, without specifying the Sort of Impotency. And the Husband to all the Interrogatories continually answer'd, That is true, that is true. Yet when the Searchers examin'd him, they found him of so athetick a Constitution, and so excellent a Conformation, that they declar'd in the most affirmative Terms, that the Suspicion of Imporency cou'd not fall on him, if they were to build folely upon Conformation. But the Marquis de Gesures can reap no Advantage from hence, because here is Conformation and Constitution; and we may fay that if his did not incline the Searchers in his favour, tis because his was not found as the Man's in this Case, superior to all Suspicion.

The fixth and last Example is in a Case still more singular than all the rest. A Husband becomes a Father, loses his Wife, and

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proceeds to a second Marriage. After feveral Months Consbitation with his fecond Wife, he goes a Voyage to Sea. During his Absence this second Wife marries another Man; and the first Husband at his return home is faluted with an Accufation of Impotency, which he answers by faying, I have had a Child of my first Marriage; but the Wife insifts upon it that the Birth of that Child was only owing to his Wife's having to do with another Man. Behold the State of this Contest in which 'tis visible that the Searchers cou'd not reasonably doubt of the Faculties of one who had been a Father Present sor his or baselsuff adu bala

Who wou'd not, after this, wonder at the Marquis's Confidence in pauming these fix Reports for so many Proofs of his false Principle, that Configuration alone is a Title for a Husband? But to baffle every manner of way his Paradox, I'm willing to suppose for a Moment, as he does, both that Configuration is a Proof of Virility, and even that it is not allowable to make a Noise about it, to discover what fort of fleep it fleeps. I fay that in adopting thefe Principles, there's no deferring to the Figure but when all other Proof is wanting, as it was in the Case of these six Reports; for in none of them did the Wife pretend her self a Virgin, in none of them did she Con offer her self to be search'd, and in most of trav

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Vife indifferent and of no Use.

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But because in these Circumstances thro' lecessity and for want of other Proofs they vere oblig'd to recur to the Configuration f the Husband, does it follow we must do in a Cause like ours, where the Wife ledges the can afford in her own Person officient Evidence to convict her Husband f Frigidity? I do indeed own that in a reat Dearth of Evidence, we must be conent with what the Occasion furnishes: But hat in a Case where the Disposition of the Business affords several Proofs, we should eject that which is most certain to stick to vhat's most dubious, this is what I can't omprehend. It can't be deny'd that the Proof refulting from the Husband's Confijuration is the most decentral of all Proofs, or on the other hand can it be deny'd that the Wife can prove her Virginity, fach Proof shou'd prevail beyond the Husband's Configuration: If therefore we were reuc'd to Configuration in Cafes where Conguration alone may be consulted, it wou'd ot follow that we shou'd be confin'd to hat alone when the Wife's Virginity can urnish clearer Lights: And by this fingle Confideration wou'd fall to the Ground the Consequence which the Marquis de Gesures The t of fraws from his fix Reports. This

This Reflection leads me to make another, by which I enter into an Examination not what Advantage the Configuration in general may give to a Husband accus'd of Impotency; but what Arguments the Marquis de Gesures may in particular draw from his, to apply them to his Cause.

To judge of this, it must be consider'd that between him and me, the Question at present is not whether he is capable; but whether he shall hinder me from proving him incapable. This is the Git of the Question. We carry about us a Proof of his Insufficiency; we offer to produce it,

and he hinders us.

lutinals affords leveral Now methinks, if a Man offers a Proof, he shou'd have on his side, either a physical Demonstration, or one of those Prefumptions which the Law calls juris & de jure, of fuch Efficacy as not to allow of an opposite Proof. Such for Example is the Presumption, filius is est quem nuptiæ demon-Grant. Proof (bould prevail bev

Now let the Marquis de Gesures tells us, whether his Configuration is a Physical Demonstration of his Ability: I'm affur'd he will not push his Confidence so far. And if he's forc'd to make of it a Presumption juris & de jure: I shall ask him where he finds it written vir is est quem figura de-Corleguence vincer

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## Mademoiselle de MASCRANNY. 61

This shows that the only Consequence he can lay hold of from his Configuration is a loose and general Presumption, founded upon the Argument, ex communiter accidentions: So that his Reasoning stands thus. Commonly Men that have the Figure are perfect: I have the Figure: Therefore I bught to be presum'd to be a perfect Man. But as this Presumption is sounded upon nothing but upon a common Accident, so neither is it of any force but so far forth as t is not combated by a contrary Proof, and such as is particular to the Subject.

'Tis presum'd, for Example, that all Men have the free Exercise of their Reason, because Men are commonly rational: Therefore each Man will be presum'd rational. But if to invalidate a last Will, I offer to prove that the Testator was not of sound Mind, the Offer of such Proof instantly ets aside the general Presumption which nade the Testator be look'd upon as a Man who had the free Exercise of his

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Since therefore Configuration can furnish othing but a loose and general Presumption like that which presumes Reason in very Man till the contrary be proved, I ay that the Marquis's Configuration be it what it will, can't deprive me of the Liberty of proving that he's impotent: I say hat so soon as I offer such Proof, his Configuration

figuration vanishes, and can no more affist his Cause than it did his Consummation of Marriage. The Reason is, because the Question consists in this, whether he shall hinder me from proving the Impotency: And he is so far from having a Right to interdict this Proof, that the Minute I offer it, he ceases to have either Configuration

or Presumption on his fide. 214 and a tul

I know very well he will rell me that the Proof I offer is infamous, injurious to the Husband, injurious to the Sacrament, ufeless, uncertain, oc but that is not the Point now in hand. When that time comes, I shall make appear, that such kind of Proof is equally favourable to Modesty, favourable to the Dignity of a Sacrament, favourable to the Elucidation of the Truth: and till these Propositions are demonstrated I may before hand argue conditionally as if they were already fo. Now in this Supposition, how can the Marquis de Gefores with his Prefumption, which is nothing but a very loose and vague Topick, stiffe my particular Proof. Description and

I go farther and fay, that ev'n his Prefumption is no longer a Prefumption, after Reports of our Searchers. Before these Reports his Configuration might be look'd upon as Appearances of Virility; but scarce were those Appearances condemn'd and rejected by the Searchers upon the particular

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Mademoifelle de MASCRANNY. 63

xamination they made of his Person they cease to have the Force or Prilege of Appearances. They might forerly pass for a Vizor; but now the Vizor's ken off: They are now nothing: And t with this nothing the Marquis de Gefores

inks he can fight against a Proof.

What's yet more amazing is that he who stinguishes three Classes of Impotents. e convicted, the prefum'd, the suspected. id who affirmes the Glory of inventing is last to place himself among 'em, allows infequently that he is at least a suspected potent; and yet he will not fuffer that is Suspicion should be clear'd up, as if in Question wherein a Sacrament is conern'd, it were lawful to leave the least oubt remaining. somevaired at nonly view

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But why do I mention Doubts: Does bt the Marquis de Gesvres by his Actings erray the Secret he fo much endeavours conceal? And for Proof of this, I here k all Husbands; I ask all those in whom ature has not bely'd her felf and play'd 'em life, that is, the whole World, except the npotents. I tell each of those Husbands, ch of those perfect Men; here are two eports of Searchers who agree in giving ou Configuration, but a very suspected ne, and so suspected, that they make us oubt whether you are Men, and whether lar ou ought not to be separated from your Wives.

Wives. These Searchers at the same time fet down the Caufe of their Sufpicion; they ground it upon the Extinction of all Motion which they observ'd in you. What course mean you to take? This is the Que stion I ask them. Now let any Man put himself in their Place, and answer; le him consult with himself, and then let's fee if he will not cry out, How! have the Searchers an Intention to endanger my Ho nour, my Condition, and my Fortune? (thef are the Marquis de Gesores own Words. Will they I fay bring all these into danger because they suspect I'm depriv'd of a Fa culty which I am but too well provided with, which I shou'd be glad sometimes to be less sensible of, and whose returns are very often a Grievance to me. Jesu! they doubt whether I have Ability, I wou'd very foon undeceive 'em. Let 'em come n my House one or two Mornings, I shall not have much trouble to convince then what I am Jorda lis des I pabasdan Hillad

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I believe, Gentlemen, that all thol Husbands, all those perfect Men, will no disavow the Answer I put in their Mouth I believe you too will agree that this is the Language they are like to speak. How comes it then that the Marquis de Gefun talks in fo very different a Manner? How comes it that instead of justifying his Con figuration by fensible and ocular Proofs o Mademoiselle de MASCRANNY. . 65

is interior Valour, he gives wretched Reanings for his whole Defence? Certainly Man need not be very cunning to see that hat obliges him to take this Course, is, that retched Reasonings cost nothing, whilst the set is beyond the Power of an Impotent. ere it is then that Impotency unmasks it ls: By this Character I know it; by these

roceedings the makes her felf visible.

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But does it not betray it self yet more hen it refuses to the Searchers the Light hich they demand and hope to find in he Person of my Client? Let us here reme the Image we just now left: Let us fecond time interrogate those Husbands, hose perfect Men: Let us ask them, if in ne Marquis de Geseres's Circumstances they ou'd stand upon Niceties, and believe like im, that an Inspection by Matrons wou'd e fuch a Profanation of a Wife as to make er unworthy of their Embraces? Methinks hear 'em cry aloud: Let ber be deliver'd ver to the Searchers, a God's Name, let the bole Faculty both of Physick and Surgery exaust their Speculations upon ber, I don't fear er being found in any other Condition than what Wife shou'd be in after three Years conjugal obabitation. Thus, in my Opinion, wou'd hey speak. Since therefore the Marquis e Geswres does not speak like others, I hold for certain he is not made like others; I old it for certain that he's fall'n into a

Pally. And why thou'd not I believe him to be Paralytick, after what I have read in Tit. 9. Book 9. of Zachias? That Author discouring upon the Causes of Impotency tells us, That a Man's Genitals fometime fall into a Palfy; that then there's an en of Hope: All's loft; no resource left: And this not only when this Evil feizes People who are upon the decline impoint of years, bu likewise when it attacks young Folks: Then says Zachias, Nature loses the Habitude of conveying the Spirits towards the afflicted Parts; and from thence it happens, tha those Spirits so entirely quit their Channel that they never refume it again. The Au thor's Words are thefe: Pra omnibus auten commemoraris impedimentis, considerabilis e genitalium paralifis, nam bæc etiam si vir i cetare non multum profecerit (the Marquis d Gefores is but twenty Years old) remedium omne respuere consucvit. Unde in omni ætal res condemnata est, desuecente etiam natura, su influxu- ad illas partes spiritus transmitten And this is doubtless the Reason why tha grave Author the Great Petrone, who ha spoken so ill of the Canonists, put thefe Words into the Mouth of a Lady dil satisfied with her Favourite, paralisin cave away Wretch! you're going into a Palfy.

And indeed the Marquis's Ail must need be a Palfy; for how else is it possible, that in the Bloom of his Age he shou'd be in that

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Mademoisette de MASCRANNY. ondition which perfect Decrepines ardly brings with it. By his own Confest on, the Fires of the first Night were stifled an Eel-pie. Who ever heard that an el-pie was a Charm to stop the Efferveence of Nature, at a time when its Sallies ight to be the most violent? By his own onfestion like wife, he barricaded himfelf the cond Night in his own Apartment, to eny the Pleafure of his beloved Solicude. Does ot such an Eclipse discover plainly to us e Horror which Fumblers have for the pproaches of the fair Sex? A Horror which hfolds it felf, just when the fatal Moment rives and then they're obliged to abanon themselves to the Impressions of Nature, hich at first is stronger than Policy, as, in tuen, Policy becomes stronger than Nare: and this is what happen'd to the Marais de Gesures. He gave this second Night Nature, and the rest to Policy: let us ld another Fact. The Marquis at his Rern from his first Campagne, is lest in a ed-chamber, solus cum sola, without a bul besides himself and my Client; and hen he's ask'd, why he did not make use

the Opportunity, he answers, The Place

as not proper. I appeal to all Men of Sende.

hetherthis be'nt the Language of Impo-

ncy. In fine, who ever heard of a Hus-

and asking three Days time to study the

eat and difficult Question, whether he has

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confummated his Marriage? I know the Marquis pretends he had not read the Face and was not appriz'd of the Interrogatoris they were going to examine him upon. Bu can a Man, who answers so well to the three first Articles, and who has the Cun ning to flick just upon the very Point tha pinches, can fuch a Man fay he had no read the Facts? If he had not read 'em, how comes he to hit fo exactly? Twas indee fo very lucky, that 'tis impossible not to fuspect some Art in it. doint not of

All that I have faid being manifest from the Interrogatory, we cannot compare with the Searchers Report, and at the fam time with the Politic Management of the Marquis, without feeing very clearly tha there never was any other Eel pie in the

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Case, but a perfect Palsie.

If after this, other Proofs are required they may be found both in the Nature of the Facts notify'd to the Marquis, and it the Nature of the Marquis's Answers there unto.

I have been reproach'd for using Art (a they fay) in drawing up my Facts; bu what is it they call Art, if it be'nt a Resem blance of Nature? Thus, according to Monsieur de Gesores, the Picture I have draw of his Frigidity, is artful for no other Rea fon but because 'tis natural; and I tell him it is natural for no other Reason, but be caule

ause it is true; and true for no other Reaon but because it was taken from an excelnt Original, You, Gentlemen, will judge it, when you come to read the Interrogaries; for I make no doubt but you'll go rough all the Evidence, before you dermine upon so important an Affair. You'll nd in my Facts so genuine a Portrait of Imbrency, that one must ha' been a Devil to ave trac'd it from one's Fancy only.

Compare afterwards with these same acts the Answers of the Marquis de Gesores. ou'll find therein the Fruit of his three ays fludy: You'll observe therein a medited Dryness: the Language of a Parrot, ave consummated, I bave consummated, and tha pat's all. The more I advance into the etail of Circumstances, the more the the arquis avoids it. That is wife in him who red

is not Truth on his fide.

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Behold now this mighty Argument drawn bm Configuration, destroy'd and bass'd ery manner of way, destroy'd in the Geral Thesis, destroy'd in the particular pothesis of the present Cause. It now reains to see whether the Marquis has been cem ore happy in proving that the Visitation manded for my Client is an infamous oof, injurious to a Sacrament, fruitless, awi certain, &c.

In this fecond Part, I have the same Adntage as in the first; that is, my Cause is

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interwoven with that of the Searchers; and the Marquis de Gefores Mooks upon those Searchers, and my felf, as his common Adversaries.

You have observed Gontlemen, in the first Pleading, and if you have forgot it you may refresh your Memory out of the printed Paper, which was presented to you You have observ'd, I say, that the unifor Reasoning of the four Searchers, leads yo directly to the Sentence I wish : By on and the same fundamental Principle, which is the Impossibility of making a fure Judg ment of the Husband's Person, even from his Person: and by an infallible Deduction by one and the same Consequence, which is the Necessity of feeking in the Wife's Pe fon, the unriddling the Doubts which it main, upon examining the Husband! Tw of our Searchers have exprelly drawn th Consequence; the other two have left it be drawn: this is all the Difference that observ'd between 'em, and this is only so the Terms, for at the Bottom 'tis impos ble that the same Principles shou'd produ contrary Consequences. Therefore who the fecond Searchers unfolded the Con quence, they were but the Interpreters the former, who thought fit to leave it i volv'd.

Thereby I vindicate these same Searche from the Calumny that is thrown up

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hem, when they are charg'd with exacting, rom the Marquis de Gefvres, a Proof that eferv'd thunder from Heav'n, a Proof that no other than the Sin of Onan. No. Genemen, our Searchers are not guilty of ich Wickedness. They did not say to the Marquis de Gefores, let us see whether Naure, who has refus'd you Motion, has dey'd you also the rest. They were far from alking to him in that manner, fo foon as hey found him inanimate. For that fecond Faculty, the very Name whereof is shockng, wou'd have been useless to him without the first: but wherefore did they speak fit; they spoke of it by way of Informaion, per modum docendi. They spoke of it o give you to understand, that even tho he Marquis were not depriv'd of the Moive Faculty, that wou'd be only a Presumpion in his Behalf, and no Certainty of Viility. In short, they spoke of it to let you now, that if you fought for Certainty, ou must apply elsewhere: and so they did t, to lead you to their Purpose, which was o cause you to order that Visitation which he Marquis de Geswres abhors, as the Rock n which his Cause will most certainly onl is as him who does but foli-tile

Since therefore the Sentiments of the our Searchers unite in making the Marmis's Capacity depend upon the State wherein he has put, or left, my Client,

I don't think, Gentlemen, that you can possibly err in following their Opinion. shou'd rather think 'twou'd be risking to much not to follow it: And if you will give me leave to speak what I think, I should reason in this manner, were I to sit Judge in the Cause. This is no Question of Law; 'tis a Question of Fact, and a Fact absolutely impenetrable to my Eyes I must therefore be governed by those the Searchers. If those Searchers had rea fon'd ill; if they had run into any Con tradiction; if they had laid down Prin ciples apparently falle; or if after establish ing good Principles, they had from then drawn Consequences which were not con tain'd in the Principles themselves, m Duty had been to order a new Visitation But here I find nothing but what is exact and just in the Arguments of the Searcher Their Principles are incontestable; the Con sequences which they deduce, or which they leave to be deduc'd, are vifibly chain to those Principles. Why then shou'd diffent from them? If I joyn with em am out of scruple; in case I err, the Er ror will not be mine, 'twill be another Error never is in him who does but follow itis always in him that leads. What the have I to fear in following? And what have I not to fear in not following? If I wi be my own Conductor, I walk without Guide

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Guides and without Eyes between two frightful Precipices: I shall perhaps separate those whom God has united, or leave united those whose Conjunction He abhorsto, I will not make my self answerable or the Fruits of so fatal a Mistake. So abide by the Searchers. This, Gentlemen, is the Principle I shou'd embrace; Pardon me that I take the Liberty to represent my Thoughts.

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Since therefore our Searchers have directed to the Interlocutory Order, which I propose, where can be the Difficulty? But his Order, say they, is against Modesty, as well as the Dignity of a Sacrament, and here's no deriving any thing from it, but Consequences alike fruitless and uncerain. This is what I must now reply o.

As to what regards Modesty; I say first, that perpetually served for a Veil to Impotency; the Tribe of Fumblers have us'd his Veil so long, that 'tis worn thread-bare; Man may see thro' it. I add a second consideration, which is, that the Modesty sa Fumbler's Wise is a captive Princess, groaning under a severe Tyranny, and who is happy if she can redeem her self for Ransom. And in the third Place, I shall sorrow Sanchez's Argument. If we so ally give up Modesty to the Necessities of lealth, why should People scruple to sa-

crifice it to the Dignity of a great Sacrament, always profan'd by an Impotent. For the fourth and last Reason I say, that if the Diffeute between us were about Morals: if we were inquiring what was most suitable to Decency, Civility, Modesty; all those common Places of Morality, which the Marquis spreads and lays before you, might be in feafon; but our Object is not to find out what is lawful or not lawful to be done; 'tis to find out what leads most directly to the Discovery of Truth. When we are to make a Sermon, a Disputation after Seneca's manner, a Declamation like those of Quintilian, then a God's Name, preach up Modesty as much as you please; but at the Bar, where Bashfulness always gives place to Truth, all that mighty Oftentation of gilded Sentences will ferve only to stun the Populace, but never benefit the Cause. The Question is about a Fact which requires a View of the Pre-cep mises. Now to go about with Morality ed to hinder such View, is precisely as much who as to fay, the Condition of the Place make alw against me. hop

All this Trash being cut off, it only remains to see, whether the Proof I require of the canonical, and whether it be admitted w

mers Now that it is Canonical, I have prove they by the Chap. Proposaisti, as well as by Chap by th

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Caufam de Prob. and fo well prov'd it, that my Proof has received no Answer. For is it an Answer to fay that Gregory VIH. Author of the Decretal Proposuisti, held the See but two Months, as if the Assistance of he Holy Ghost was promis'd to none but ong Pontificates? Is it likewise an Answer to deny the Decretals to be the Laws of the Church? You fay you never heard of this Proposition, I believe it, but 'tis ne'er the es common, nor incontestable for that; the and because I take nothing as you do, by dint of my own Wit, I establish what I advance, with the Authority of Monsieur de Marea, who speaks thus in Chap. 10. of his First Book. Our Kings, says he, of the els fecond Race, were no ways inferior to she hose of the first, in the Regards they paid vill to the Decrees of the Holy See. ver needs no further Proof of this than the Vo-out time of Decretals; for those Decretals, ex-cept fome few, which Custom has rejectlity ed for Reasons we shall take notice of elfewhere, those Decretals, I say, have been kes always look'd upon in France as the Laws of he Church, and that not only in the Bi-re hops Courts, but likewise in the Tribunals unt of the Royal Judges.

tted When, after this, I see certain new Comers, pufft up with some early Successes ovid they have met with at the Bar, abrogating hap by their Authority the whole Body of the

E 2

Decretals, I own I can't contain my felf. Do not those Gentlemen know, that for above 400 Years, the common Law of France, the Law practis'd in all the Episcopal Courts, which then took Cognizance of most Affairs, was no other than that of the Decretals? If this be so, as no body can doubt it, the Decretals then are confirm'd among us, by a Usage of four Ages: And if fince Charles VII. we have rejected some of them, as clashing too much with the fundamental Maxims of the State, will that hinder the others from preferving their

I own therefore, with Monsieur de Marea, that the Decretals which make a Breach upon the Sovereignty of our Kings, the Liberties of the Gallican Church, and the Hierarchical Power, have not amongst us the Force of a Law: I own too that it were criminal to follow them: but the Decretal Proposuisti is not of this Number, it neither huits the Royal Authority, nor our Liberties, nor the Subordination of the Hierar-'Tis a Law which determines concerning the most spiritual Matter that ever was, concerning a Sacrament, or at least concerning the Means of knowing whether there was, or was not a Sacrament.

Now what fays this Law? Why, it decides in Substance that in Questions of Impotency, where the Husband affirms he has

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accomplish'd his Marriage, while the Wife affirms the contrary; the Wife's Affirmation ought to carry it, if by visiting her Person, and the Report of Matrons, she

can make appear fhe is a Virgin.

I know very well, that as the Debate in hand is about a Proof which is to enter into a Judiciary Preparation, the Decretal which I cite, wou'd have no great Force, if the Course of Judgments had not adopted the Proof, which that Decretal authorizes; I mean the Proof of the Husband's Impotency by the Wife's Virginity. But need I again prove to you, that this fort of Evidence is in use to this Day, nay, in common ordinary Use? Certainly it wou'd look odd in me to go about to demonstrate to you, what you fee daily, Gentlemen, what every body fees, what all the Practirioners of the Ecclefiastical Court knowfull well.

Yet fince I'm forc'd to take a Flambeau to shew the Sun, I shall not go farther back than the time of Master Anne Robert, who in the 4th Chap. of the 10th Book, has recorded a Cause of Impotency, in which all the Question was, whether the Proof of the Husband's Frigidity shou'd be look'd for in the Body of the Wife: This Author's Work is in the Hands of all the World. There may be seen the Reasons he brings for and against the Husband, who oppos'd

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the Visitation. In the Issue, it was resolved, that a Visitation might be order'd without wrong: Whence I conclude, not only that the Usage of such Visitations is preserv'd, but that it was also solemnly approv'd by a Decree; for surely 'tis approving it, to declare It had nothing of wrong in it.

To this Example must be join'd those I quoted in the first Plea, and which remain unanswered; for instead of answering there to, they hang upon the Decree of Caut,

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which I did not cite.

I must likewise super-add the two Works of Tagareau, and Hotman. You'll find that in their time the Visitation of the Wise was order'd jointly with that of the Husband, and that the one was no less frequent than the other. I likewise shew the same by the Example of Mr. Facob and others, quoted

But because they of the other side have been so very extravagant as to pretend that the Inspection of the Wise was a Sequel of the Congress, which was at that time practised, and from thence to conclude, that the Abolition of the Congress, did likewise put an End to that sort of Proof; I find my self obliged to shew in this Place, both that there's no Relation between the Congress and the Inspection I require, and that after the Abolition of the Congress, this kind

Mademoiselle de MASCRANNY. 79 of Visitation continued in use as before.

As for the first, 'tis making a Jest of the Publick, to go about to shew any Conformity between the Inspection of the Wife, and the Congress. Need I here explain the essential Difference between these two things? Is not every body sensible of them? and wou'd People have me minutely scan such Operations, which they sear even to

conceive in the Lump?

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I content my self therefore, to say that the Inspection I demand has been a Proof in all times; 'tis not to the Decretal Proposuifti, 'tis to the Usage antecedent to that Decretal, it owes its Introduction. For the Decretal only confirm'd and authoriz'd a Usage, which it found and establish'd; 'tis not so with the Congress: Which introduc'd it self without the other, and almost within the Memory of our Fathers. Now the Case being so, I say, these two kinds of Proof have no Alliance together. The \* Congress is abolish'd, so let it, with all my Heart. We are now in the same Condition we were in before that Mon-

<sup>\*</sup> The Congress means the Ast of Copulation, in the Presence of an Ecclesiastical Judge, appointed to see it done: Vide, the Index explaining all the Terms; subjuin'd to the second Vol.

fter appear'd: but as before that time the Proof of Virginity was a Proof admitted by Custom, and authoriz'd by a Law, there's nothing to hinder you from making use of it now. For in short, the Decree which banish'd the Congress, did not banish the Proofs which were inforce before the Congress.

Accordingly the Proof we speak of has been allow'd in an infinite Number of Occasions, even since the Congress was repeal'd. All your Registers, all the Registers of the Episcopal Courts of France, are full of Examples, which authorize my Proposition; but to avoid Prolixity, I shall only produce two of this Court, the Master whereof has furnish'd me with the Pieces I shall cite.

The first of these Examples, alledg'd by the Marquis de Geswres himself, is that of Cajola.

Cajola being complain'd of for Insufficiency, pretends he has consummated, whilst his Wife maintains the contrary. Upon this, M. Cheron the Official, of his own proper Motion, orders a Visitation of the Husband, and if need were, of the Wife. These Words, if need were, left it to the Judgment of the Searchers, whether 'twas necessary to proceed to visiting the Wife.

The Husband being inspected, is found well conform'd, except as to some very in-

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Mademoiselle de MASCRANNY. 81 considerable Defects, so the Searchers not meeting with perfect Satisfaction in his Person, have Recourse to the Body of his Wise; but it thereupon appearing, that she had frequently used the Rights of Marriage, (these are the Words of the Searchers) her Complaint was rejected, and the Marriage confirm'd.

This is an Example, which, methinks, ought to encourage the Marquis de Gesures, not only to suffer, but even to require the visiting my Client. For if he has made her enjoy the Rights of Marriage, so frequently as he pretends, 'twill be no more difficult to find Footsteps thereof in her, than 'twas to find them in the Wife of Cajola.

The second Example is that of Hubineau, which has so perfect an Affinity with the present Case, that I can't dispense with my self from giving it somewhat at

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n-1Hubineau being interrogated upon his Impotency, declares he has confummated, at least he believes so, and if he has not confummated, the Fault lies in the Refractoriness of his Wife. The Wife being interrogated, insists upon't, that she's a Virgin, and consents to have her Body inspected.

When Hubineau was visited, observe what Report the Searchers made. The Terms of it are indeed more reserv'd than those of ours; but it deserves to be here transcrib'd.

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After

After having examin'd the faid Sieur Hubi. neau in all the necessary Parts for knowing whether he be apt and capable to fulfil the Devoirs of Matrimony, we cannot give a Decision Sufficiently full and valid, without having first visited and examin'd Mademoiselle de la Mothe bis Spouse, from whom we may get the necessary Lights for drawing up a sure and juridical Report, and so far decisive as is requisite in an Affair of Such Importance. This shews by the bye, that Hubineau had his Conformation entire; for, otherwise, the Searchers wou'd have condemn'd him upon inspecting his Person, and they wou'd not have concluded

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upon vifiting his Wife.

But letting that pass, the Cause in this Condition is brought before you, and Hubineau's Wife forms a judiciary Demand to be visited upon the contradictory Pleading. A Sentence passes, May 10. 1700. in these Terms, Upon the Plaintiff's Request, we order what she be visited in her natural Parts by the Searchers; this is the whole of that Judgment. For we must not rely upon the Representation which the Sieur de Combes has made of it in his Book; he modell'd it by his Fancy according to the Instruction good or bad he was minded to give his Reader: But I have an Exemplification of that Sentence, fign'd by him in Quality of Register, and this Exemplification which is conceiv'd in the Form above recited, ought to have more

Mademoiselle de MASCRANNY. 83 more Weight than a Copy he gives to the Publick as an Author.

The foresaid Sentence was executed: Hubineau's Wife was inspected by six Searchers, two Physicians, two Surgeons, and two Matrons. These Six Searchers agree she's a Virgin, and that the Marriage was never consummated; but four of the fix attribute this want of Consummation to the Impotency of the Husband, while the other two impos'd on by Hubineau's good Conformation, judge that he wou'd not be uncapable of consummating, if he were again to live with his Wife.

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The Promoter upon this concluded, that these latter ought to express themselves more clearly; but without having any regard to their Conclusions, You, Sir, pass'd a definitive Sentence declaring, there had been no Marriage between the Parties.

From this Sentence an Appeal as for Wrong done is brought by Hubineau, and a Day appointed for Hearing: During the Preparation Hubineau demands to be visited by two new Searchers, which shews that his Plea of Wrong done consisted in that he had been judg'd Impotent upon the visiting his Wife. It was however decreed, there was no Wrong; and so the Proof which results from Virginity aver'd by a Visit, was adjudg'd a Canonical, Lawful, and Nonabusive Proof. Now I'd fain have M. Che-

valier,

valier, by the Dint of his Wit, shew me any difference between this Case and ours. Was not the Visitation of Hubineau's Wife propos'd by the Searchers, as it is in our Case? Was it not requir'd by the Wife, as ours is? Was it not upon the Wife's request, and in spite of the Husband's Opposition, order'd, as it doubtless will be in this Cause? In short, upon the sole Assurance which the Searchers gave of the Wife's Virginity, was she not freed from her Marriage, as tis certain my Client ought to be? And why were the Searchers (who visited Hubineau) oblig'd to conclude upon visiting the Wife, if it were not because Hubineau's Conformation as good as 'twas, as appears from the Report of two of the Searchers who bandy'd together a-part, was judg'd an ill Warrant of a Husband's Manhood? A Judgment perfectly like that which our Searchers have giv'n of the Marquis de Gesures's Configuration.

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Another Precedent which I have taken out of the Officiality of Rennes, and which like the other is posterior to the Abolition of the Congress, will compleat the Indubi-

tableness of my Proposition. Margaret Landry in forming her Complaint against her Husband for Insufficiency prays, at the End of her Libel, that the may be permitted to make Proof of her Virginity by a Visitation and Report of 17. Searchers. The

The Husband being visited is found perealy figur'd; but because he had little or no Beard, and the Searchers observ'd some signs of Weakness in his Brain, they delar'd in like manner as those we have been peaking of, that they cou'd form no deciive Judgment of him without examining

he Wife's Body.

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The Contest reduc'd to these Terms is carry'd into the Episcopal Court of Rennes. where there's a Rule made. I ask the Mar-. quis de Gesvres, Whether the Question difer'd from that now before us? Did not the Wife require the visiting her Person? Did not the Searchers conclude upon the same? ars Did not the Husband oppose it? Was not this all the Suit? In the Issue an Inspection of the Wife was order'd. The Husband throws in an Appeal as for Wrong; but by Decree of the Parliament of Rennes 'tis said. de there's no Wrong. The Wife is visited. ound a Virgin, and the Marriage dissolv'd ken by a definitive Judgment, which the Husich band durst not complain of.

I bring another Precedent from the Pariament of Aix: I shew that in the Officialty of Langres, which is of the Jurisdiction om of the Parliament of Burgundy, the same ncy Practice is follow'd, and I confirm it by that Evidences of the Process of the Sieur Verdin, her which was no longer ago than last Year, t of 1711; Evidences all exemplify'd in good

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and proper Form. In fine, I produce the Actings of the Parliament of Toulouse and Grenoble, attested by the proper Officers of each County: And shall I after this be told, that the Proof of the Husband's Insufficiency by visiting the Wife is an obsolete Proof, and out of use. I could hardly forgive such frontless Affurance, but that I know 'tis the only Resuge of desperate Causes.

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I do not now believe it very necessary is repeat the Practice of the Canonists. shall however in a Word fay, that the Glo in a thousand Places knows no Proof more ftrong and efficacious than that drawn from the Person of a Wife, when she's a Virgin Confult that Gloss upon the Canon me aliqua, upon the Canon requisifti, upon the Canon si quis acciperit, upon the Chapte proposuisti, upon the Chapter causam de pro upon the Chapter continebatur de despons. im pub. and an infinite Number of others eals to be met with. When you have foun them, you'll fee that according to the Glo the Proof of Virginity per afpectum corpora furmounts all other Proofs admitted by the Church: You'll at least find this Maxin which is enough for us : Probatio Virginitati quæ fit per aspectum corporis potentior est proba tione quæ fit per affirmationem viri; a Propo fition which Panormitanus teaches upon the Chapter proposuisti, and after him all the Cano

Mademoiselle de MASCRANNY. 87 Canonists to a Man: And 'twas impossible or any of 'em to wander from this Dotrine, since 'tis that of the Text which hey interpreted.

What remains for me to do after this is, o defend this Custom against the Objections which are brought against it. Strange! hat I must defend a settled Custom; that I nust undertake the Cause of the Church, he Cause of the Canons, the Cause of all he Canonists, as if the Church, the Canons, the Canonists, and the Custom, were ot to defend themselves by their own Au-

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First, they oppose to me the Opinion of me Physicians, who have fancy'd that irginity was a thing that escap'd the Cuofity of Man, and was not to be known y any certain Mark; which they pretend confirm by a Passage out of Solomon: But for Solomon, we may lay him afide, fince e Reading of the Passage which they cite contested. The Vulgate, which is the hly Text the Church owns for authentick, es not compare a Woman to a Pavement Free-stone which may be walk'd upon ithout making any Impression, it does ot say, Quartum penitus ignoro, viam viri ADOLESCENTULA: The Way of a Ian with a Maid. It only says, that as it impossible to mark the Way of a Ship at is toss'd at Sea in a Tempest, so is it

impossible to follow Step by Step the Ex travagancies of hairbrain'd Youth which gives a loose to its Passions; quartum penitu ignoro, viam viri in ADOLESCENTIA.

As for the Physicians, things are come to a fine pass if the Decisions of the Church the Custom she has follow'd in all Times and still follows, are to depend upon the capricious Speculations of a few private Men vested with no Authority. What because one Lodronchius, one Nancetius one Ulmus, one Valefius, one Alfurius, on Fortunius, one Joubartus, have conceited in their Closets, that the Traces of a Ma are loft like those of a Bird raising felf into the Air: must we suppose the Church ill inspir'd, for believing that Vin ginity was not an impenetrable Secret must we hold the Canons for old Wive Fables, the Canonists for crack-brain Fools, the Custom of all times, and the soo Practice of all Ages, for an Abuse founde on the strangest Mistake that ever was he Yes, I warrant you: we must reform the judiciary Method of the Episcopal Court Tok upon the Idea of Lodronchius, or, in orde low to compose: a new one, take Counsel to me Allurius.

I add that most of those Physicians, who ha they of the other Side produce for makin Ve a the Marks of Virginity doubtful, are Me reh who fay, that it is not to be known by the her

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Hymen; supposing it were so, that does not hinder its being discoverable by other signs. God forbid, Gentlemen, that I hou'd here descend into the Particulars of hofe Signs, which are neither fit for me o speak, nor you to hear. What I may ay is this; Zachias himself, whom the Marquis de Gesvres has cited to establish his Proposition; Zachias, I say, tells you how o find out Virginity in Quest. 3. Lib. 3. After having taught some Marks thereof, e draws this Conclusion, Quamobrem si ltra bæc, quæ jam notavimus, signa, alia quæ la am notanda veniunt, apparebunt, non inane irginitatis judicium ferre licebit. This Authe hor then held, that Virginity was cogofcible. But is he alone of that Opinion? et certainly, no: For we have on our fide enerinus Pinæus who made this Question his articular Study in order for the Book we have of his De notis Virginitatis. de This Author, who is of great Weight in he Physick Schools, proves, cap. 5. That the Maidenhead discovers it felf by undeniable okens; and afterwards he cries out: rde low is it possible that there shou'd be still ome among us who suspect such manifest, uch slagrant Proofs. But I'm asham'd hor have recourse to these foreign Doctrines. kin We are not now in a School of Physick; Me ve have no Chirurgical Thesis to maintain. Therefore I apply my self to the Marquis

de Gesores, and ask him, whether he pre tends to be the first Impotent who main tain'd, that Virginity can't be known. he will answer truly, he will own, the a thousand others; nay, to speak more en act, all those who have gone before his have made use of the same Proposition But did they better their Case by it? No in the leaft: No one of 'em ever fucceede in urging this false Principle. 'Twas i vain to dress it, reinforce it, it was new look'd upon as any other than a fantastic Opinion fprung from the Contradiction the School, and incapable of changing Usage as antient as the Church. I m therefore fay to the Marquis de Gesores, yo make use of a Reason a thousand time profcrib'd, an Argument condemn'd at rejected as often as ever it appear'd, and Doctrine equally fet aside by the Usage all Ages, and by the Authority of adjudg and Cafes in these latter Times.

In short, I appeal to all Physicians, a Chirurgeons conversant in the practic Part, to all Matrons and Midwives, who have Experience for their Maste whether it is not true, that the State of Virgin distinguishes it self by Marks prop to it. The Book-makers may fancy the Bu per; but they who see something else tion Afre

laugh at the Book-makers.

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After this, the Marquis de Gesores may ress his Objection as much as he pleases, nay talk his Heart out, and fay, that tho' Vature may have put fome fensible Distintion between Virgins and other Women, hat wou'd not hinder but Art might make ounterfeit Virgins. Such Delufions are ractis'd, fays he: And there are Maideneads as well as Paints for the Face to be

ought at the Shops.

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But if he had been ever so little acquained with the Principles of Anatomy he you'd have known, that the Virginity is nly to be discover'd by certain Ligaments g which no Art can restore when once they re destroy'd; he wou'd likewise know, hat Venal Virginity changes nothing but me he Surface; and that by penetrating ever little, 'tis presently seen whether 'twas ought at the Market. I add, there are compositions which make the Mask fall off.

Ind herein I say no more than what I have

ather'd from many Masters of the Art, nd there's no manner of likelihood that hey impos'd upon me; for otherwise the Vorld must have been bubbled for fourteen r fifteen hundred Years, by a fallacious experience; which I take to be imposopt ble.

But furthermore says the Marquis de Prefores (and here behold a second Objeellation) Why must the Wife be expos'd to

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the prying Inquiries of the Searchers, when the Husband does not confent to it, find 'tis what was never done without fuch Consent? To which I answer, that the Law which makes the explicating of Vin ginity depend upon the Will of a Husband accus'd of Impotency, is a Law made by fome Impotent; and there's a great de of Reason to think we are beholden for it to the Marquis de Gesvres; for I don't fin

it in any of the Books.

I fay further, this Law, if it were is any Code, wou'd merit the publick Den fion; besides, that it were impertinent to submit the Allowableness of a Proof w the good Pleafure of him against whomi is propos'd. 'Tis certain the Husband wou'd never permit the diving into the Secret but when he was fure of Success and when by indirect Ways he had eras'd in his Wife's Body the Tokens of her Virgi nity. And thus the Examination of the Searchers wou'd no longer ferve to prove that the Wife is a Virgin, but only that the is not a Virgin. And yet, he who prove that his Wife is no Virgin, does not prove that he himself is a capable Husband; for other People might have cropt the Flower of her Maidenhead; and by this means the Inspection wou'd never be us'd but when nothing cou'd be concluded from it; whilst it was refus'd to be made use of in Mademoiselle de MASCRANNY. 93 n the only Case where it cou'd be a Proof.

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If you please to observe, Gentlemen, here's a great Difference between a Wife vho fays I am a Virgin, and a Husband who ays, my Wife is not a Virgin. If the Wife peaks true, 'tis a hundred to one but the Jusband is Impotent, because none but an mpotent can leave the Virginity of a Vife subfifting. But if 'tis the Husband hat speaks true, the Consequence which ows from the Wife's Condition, has ardly any force, and 'tis then but an ven Wager that the Husband is capable. know very well that in Case of Doubt, he Husband rather than any other is suposed to be the Person that has brought an clipse upon the Virginity. But in short, the Scale turns for the Husband, he is hore beholden to what is call'd favourable nterpretation, than to strict Reasoning; and truth, a Virginity lost proves but ery imperfectly the Husband's Perfection; whilst a Virginity not lost carries with it a noral Certainty of his Imperfection, or, you will, of his Insufficiency.

As therefore according to the Marquis le Gestures's new Principle, the Virginity wou'd never be search'd for, but when twas no longer in Being, whilst there was o be no Search allow'd when it was in Beng; it wou'd follow that the Church

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wou'd never have Recourse to that Proof but when 'twere useless, and without Consequence, whilst it wou'd not be permitted to make use of it when it might produce

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certain Consequence.

But why do I battle this ridiculous Pa radox with Reasoning? Have I not before deftroy'd it transiently, when I instance those Sentences and those Decrees, which upon the bare Request of the Wife, an in spite of the Husband's Resistance, have made or approv'd fuch interlocutory Or ders as I contend for. Is it for Example likely, that the Husband, whose Cause reported in Anne Robert, did voluntarily de liver up his Wifeto the Searchers, he wh makes it the Ground of his Complaint, the the Sentence of the Official had deliver her up? He who look'd upon a Virginit fubjected to the Inquisition of Matrons, the greatest and most enormous of all Ab fes? Do we find in Tagareau and Hotma that the Wives before they offer'd themselve to be inspected, did humbly beg Permissio of those Husbands whom they charg with Impotency? Do we find that Call consented to the Visitation of his Wife We find it indeed in the printed Book of e P Combes, but in the Office copy of the fan usba de Combes, we find the contrary. For the on Sentence which he has exemplify'd for usedic makes appear that the Visitation of the for Hu

Ausband and Wife, was order'd by the mere Motion of the Official, independantly of he Consent of the Parties. As for Hubieau, 'tis manifest he never confented to the nspection of her who arraign'd him of Imotency, and that it was order'd for no oher Reason, but because the Wife offer'd er Body thereunto, and demanded it juriically, that is in Court. This I have deionstrated by the Sentence it felf, which egins with these Words, The Plaintiff reires this to be done : and this is what gave ccasion to the Appeal which was unprofibly, and to no purpose thrown in by the id Hubineau. The same may be said as to e Precedent de Bretagne. So far was the spection from being order'd by Consent the Husband, that the Pleadings of the usband were to no other Purpose but to event it. This was the only Question tween the Wife and him, first before the ficial, and afterwards in the Parliament

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Rennes.

The Marquis de Geseves is so unfortunate Maxims, that, to find out the found Doine, a Man must take the Reverse of the opolitions he advances. So little does e Proof of Virginity depend upon the usband's Confent, that it depends folely on the Consent of the Wife. An Inor unction is never order'd but when the Wife f the sforth that the's a Virgin, and fubmits

to verify it. The Reason is, because the Evidences of Virginity are subject to more than one Accident; and as none but the Wife can know whether hers has escapid those Adventures, the Rule will have it that the Judge do, before all things, affur himself from her Mouth how Matters stand She must first be ask'd in what Condition are her Evidences, and then whether she willing to exposethem; without this Pre caution the Proof would have no Force because the Wife being found no Virgin might impute the Loss of heVirginity to fome Misfortune; which she can't do when before the Inspection she has pre cifely fet forth, and articulated the Int grity of her Condition; and it was for the Reason that the Official very carefully en quir'd of Hubineau's Wife, whether she pro tended to be a Virgin, and whether A consented to have her Body visited. By to proceed to another Objection made the Marquis.

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I grant, says he, that sometimes the Visitation of the Wise may be order'd; but never was but in Cases where the Husban retorted upon her the Accusation of Importency, by charging her with some Vitiousne of Organization; and if then the Wise is the yielded up to be examin'd by Searcher it is not in order to judge of her Virginia but to know whether or no her Configura

Mademoiselle de MASCRANNY. 97 tion is fit and apt for the Intimacies of her marry'd Condition. Now, adds he, I don't tax Madam de Gesores with any Defect of Configuration. Ergò, we are not in the Case where her Inspection may be order'd.

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I answer, that in all the foregoing Examples, the Wife was not subjected to the Visitation for any other account but to put the Searchers in a way of knowing whether the was a Virgin, and from thence udging of the Husband's Frigidity. Cajola, or Example, did not hang upon the evil Configuration of his Wife, fince he preended to have confummated. So it was with Hubinean, who likewise flatter'd himelf with feveral Confummations, and in hort fo it was in the Affair of Bretagne. The Wife offer'd her self to the Visitation, nd required it, for the fake only of afceraining her Virgin State, and thence conluding the Impotency of her Husband. The Husband, on his part, did not impute o the Wife any Viciousness of Configuraion; and yet the Judge nevertheless for hat expos'd the Person of the Wife to the nquisition of the Searchers.

But to leave no Scruple remaining, we will wipe out even the very Colours with which the Marquis de Gefores can possibly arnish over his Illusion. It is true, in well-regulated Courts, the Sentences which

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order such Visitations, do not in express Terms fay, that they feek to know whether the Wife be a Virgin; but the sole Intent of that Precaution is, not to bring in question the Honour of the Wife. For as the Seal of Virginity is various ways effac'd; its eclipse, tho' perhaps innocent, might give a handle to Calumny, if on the one fide there was a Sentence which expresty constituted the Searchers Judges of Virginity, and on the other a Report affuring that her Virginity was vanish'd. This Reflexion I borrow from Fevret, and ris to avoid this Rock that in the Officialties they abstain from faying, View if this Woman he a Virgin, and only fay to them, View this Weman, and nothing more; or if the Judge for colouring his Sentence, has a mind to present some Object, he supplies of his own accord, as he can, the Impossibility of a respective Impotency, or of a vicious Organization in the Person of the Wife, and then he orders that the Wife shall be visited, to know from which side comes the Insufficiency. But thele Words, to know, &c. in this Cale ferve for nothing but a Pretext. For the Judge's true Object is to fatisfy himself, whether the Wife be a Virgin, and this appears from the Execution of the Sen tence; for whether it runs, purely and samply, as is practis'd in this Officialty, that the Wife shall be visited, without saying where. order

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Mademoiselle de MASCRANNY. 99
wherefore; or whether it adds as is the
Practice at Rennes, to know from which side
comes the Insuspicione, in both Cases the Searchers equally apply themselves to examine

whether the Evidences of Virginity speak for her or against her, and according to their Depositions, they determine pro or con.

All that I have been speaking, is no more than a Deduction from the Precedents above cited. In the Affair of Hubineau, you order'd, Sir, that the Wife shou'd be vifited without further explaining your felf. In the Affair of Remes the Official order'd fhe flou'd be vificed, to know from which fide came the Insufficiency. Yet respective Impotency was notalledg'd on either fide; but the prudent Silence of the first of those Sentences, and these Words of the second, to know from which fide comes the Insufficiency, did not hinder the Searchers from bending their whole Application to enquire into the Tokens of Virginity, and because they found them entire in the two Women, they were dif marry'd.

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By this I make it appear, that the whole Objection of the Marquis de Geseres turns upon a Nicety of Stile, which confifts only in the Terms, and which makes no Alteration in the main, as appears from Custom and Usage. I pass therefore to the Examination of the other Propositions, and come to the grand Argument on which all the Hopes of the contrary Side are built.

We have been told, that the Virginity of

a Wife is not a demonstrative Proof of the Husband's Impotency, that it may indeed be a Proof that he did not acquit himself of his Duty : But perhaps he had no mind to acquit himself of it, and then it was the Will and not the Power he was wanting in; whereas to render a Marriage void, the Power must be incapable of seconding the Will; but because the Marquis de Gelvres is aware of being answered, that a Man who brags of fo many Confummations, cannot plead want of Will, he forestals the Objection and fays, that we must not take his word in the Case, that he perhaps impos'd upon the Church, when he gloried in so many Atchievements, that perhaps he did not even go fo far as Attempts and Approaches: That he is always at liberty to retract: That in truth he does not yet retract, but whether he retracts or not, it is never allowable to risk a great Sacrament upon the Credit of a Declaration of one of the Parties who may have had his Reasons for deceiving the Church.

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Were I minded to flew how falle this Principle is, that in Questions of Impotency, the Church never rested upon the Faith of the Parties confirm'd by their Oaths, nothing cou'd be more eafy for me to do; I shou'd need only to run over the different Chapters which compose the Title de Frigidis, and especially the fifth and last; I need only make use of the Canon Requififti,

pose. But as the Marquis de Gesures knows neither Canons nor Decretals, I will argue

against him from other Principles.

- And first I ask him, If his Argument is fo strong, fo conclusive, fo invincible, how comes it no body ever made use on't till now? Tis certain, had it been infurmountable, there had needed no more than to propose it to have put a stop to all those Visitations which have been order'd for 1500 Years! It is certain, that all the Senrences which have look'd upon the Wife's Virginity as a certain and concluding Proof of the Husband's Impotency would have been ridiculous and abusive certain that all the Decrees which have authoriz'd the Execution of those Sentences, would have had nothing but Paralogism and Error for their Foundation; certain that Pope Gregory VIII. who consider'd the Husband of a Virgin as a convicted Impotent, must have been abandon'd by Reason, and confequently by the Holy Ghost; certain that the Church, who receiv'd from him this Lesson, and has practis'd it in all times, might be compar'd to the Blind led by the Blind: certain, in short, that all the Canonists, all the Prelates, all the Officials in the World wou'd have been under a long and absolute Delirium and Dotage. Now when an Argument produces fuch strange Con-

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Confequences, and at the same time fo impious and so blasphemous, the greatest Honour we can do it is to regard it as one of those acute Subtilties which the human Wit does sometimes squeeze from the Torture it gives it felf. Tologon of senote of

But independently of this Prejudice, we must examine this Phantom a little nearer. and fee if it can bear to be ftar'd upon in

the Face. coff is the stail of the elegate of

Its whole Strength rouls upon the Uncertainty of the Caufe which has preferv'd the Virginity of my Client. Is the beholden for it to the ill Humour, or the Impotency of the Marquis de Gefries ? Is the Husband upon this occasion a Debtor who does not love to Pay, or a Debtor absolutely incacapable of Paying? This is the whole Difficulty.

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To make a Judgment of it, we need only examine whether he has attempted to confummate; for if he has attempted it, and at the same time has not succeeded, itis certain the Uncertainty ceases, and that then 'tis no longer to ill Humour but Impotency the Virginity ought to be afcrib'd: We can no longer confider the Marquis de Gesvres as an ill Pay-master,

but as a broken infolvent Debtor.

True, fay they, but then you must prove that the Marquis de Gesores has attempted; and 'tis not enough to prove it out of his own

own Mouth, since 'tis suppos'd for a Principle that he is not worthy of Credit: His Attempts must be made out otherwise than by his own Declaration. Thus then the Dispute is whether I prove the Attempts,

and how I ought to prove them.

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Now this being so, I ask, whether I ought to have prepar'd a Notary and Witnesses to draw me up a Writing of the Marquis de Gesvres's Approaches? Ought I to prove those Approaches by the Testimony of his Domesticks? I don't believe, Gentlemen, that they can hold me to a Proof that wou'd degenerate into Madness, and you are prima facie sensible of the Consequences of it; for you easily comprehend that if such Proofs cou'd be demanded of me, it wou'd be rendring all the Accusations of Impotency impracticable, it wou'd, to speak properly, be abolishing 'em.

What then is the Proof that can be required of me? Even no other than that of Condormition. Pardon me this Term; it is a Term of Art, and us'd in the Language of the Rota, to fignify the nocturnal Cohabitation of a marry'd Couple in the same Bed. I am therefore to prove that I have past whole Nights with the Marquis de Gesures between a Pair of Sheets. But that I should be oblig'd to report in a verbal Process what was transacted between those Sheets, is what even Extravagance it self

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cannot exact, either of me, or any other Woman in the same Circumstances.

What I fay, Gentlemen, I don't fay from my own Head; and tho' the Light of Reason alone ought to be a sufficient Paffport for my Proposition, yet I ought not to neglect the Affistance which is offer'd me from Authority. Hear then the Words of the 48th Decision of the Rota among those which have been added to the new Edition of Zachias : Quod conjuges, fays the Rota, incubuerint operi nuptiali, satis probatm se constet conjuges habitasse in eodem lecta. Thus so soon as it is manifest that the marry'd Couple have poffels'd the fame Bed, babitaffe in codem lecto, it is likewise manifest. either that they have confummated, or that they fet about it, satis probatur quod incubuerint operi nuptiali.

The Rota Supports this Maxim with nothing but the Authority of Hoftiensis upon the Chapter Fraternitatis; but I am going to confirm it with a formal Text, which is the Chapter Litteris de Prasomp. Take

the Cafe as follows.

A Woman is furpriz'd, lying, fide by side, in the same Bed with a Kinsman of her Husbands, but she is not taken doing the Deed. The Question is whether, from the Circumstances she was found in, can with certainty be inferr'd, a Confummation of Adultery. For Supposing the Adultery

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Mademoifelle de MASCRANNY. 105

confummated, the Wife cannot without Incest joyn her self again to her Husband: And in that Cafe, the Necessity of avoiding Incest, gives occasion to the Separation of the Husband and Wife. Now the Pope decides, that the Adultery ought to be held confummated, only from the stoln Cohabitation of two Persons of different Sexes in the same Bed, provided those Persons had put themselves in the Condition which People put themselves in when they go to Bed, solus cum sola, nudus cum nuda. The Terms of the Decretal are as follows: Consultationi tua taliter respondemus quod ex bujusmodi violenta & certa fornicationis suspicione potest divortii sententia promulgari.

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The Argument which is drawn from the Condition in which these two Persons were surpriz'd, is here called only Presumption, suspicio: But because this Presumption is not only violent, but infallible, violenta & certa, the Pope judges it sufficient to ground a Sentence of Divorce, potest divortii sententia promulgari: 'Tis then a Principle. that even among Persons who have no mutual Obligations to each other, Condormition proves a Consummation of a Sin: Therefore, with greater Reason, between two marry'd People who are bound to a mutual Performance of conjugal Benevolence, it ought to be a Proof either of Confummation, or of Endeavours towards

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Consummation, and if it were not so Accufations of Impotency wou'd have no Issue, res non baberet exitum: It wou'd be like the Bottom of a Bag: you might indeed enter, but cou'd not get out again but by the same way you went in; which wou'd be doing

puft nothing at all. same union blan an

And this is the Reason why this mighty Argument, of whose Appearance this is the very first Day, durst never yet shew it felf: This is the Reason why it has been neglected by all Husbands arraign'd of Impotency, who were minded to hinder the Secret of Virginity from being explor'd: this, in fhort, is the Reason why such Proof of a Husband's Insufficiency as is supply'd by the Wife's Person, is a concluding Proof inftly introduced by the Canons, and justly admitted by the Church. If the Churchis content with it, 'tis enough, tho' it cannot be call'd a geometrical Demonstration because there is no Geometrical Demonstration for Facts, much less for Facts that pass in secret. Therefore such Presumptions as are violent and infallible, certa & violenta, art fufficient and down or a orwald was

I don't believe, after this, that Incredulitywit self can go such a length, as to doubt that the Parties were in Bed together during this Co-habitation. If any were capable of stretching their Superstition so far, it wou'd be no difficult Matter

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Mademodelle de MASCRANNY. 107 for me to farisfie that Scruple. I could produce as many Witnesses as the Duke the Tremes, as the Marquis de Gesores have Domesticks. But, once again, I don't believe any body can be fo exceffively incredulous. Now if Condormition Suffices to remove Doubt as to Efforts, 'cis to no purpose to tell me that the Marquis de Gesures's Answers in his Interrogatory are of no weight; for it is not from those Answers I bring my Proof. I bring it from Condormition, which produces in my Favour 2 legal Prefumption, on which the Judges ought to rest, fince the Law rests upon it-Northat the Affirmation (which the Marquis made in his Interrogatory, when he told the Church he had confummated) ought to be absolutely set aside, as an Evidence altogether useles; for it wou'd be arguing like Idiots, to fay, that when a judiciary Confession does not of it self make a compleat Proof, it serves for nothing. It at least ferves for a grand and violent Prefumption, till the Marquis de Gefores vouchfafe to make out that he has deceiv'd us, and told us an Untruth. It is not an invincible Proof, because it may be baffled by contrary Proofs: But fo long as there shall be no particular Reasons to render it sufpected, it is to be look'd upon as fincere and true, at least so far as it proves Efforts and Attempts iv adv more involved their

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I ask then the Marquis's Partifans (for tis they who retail abroad this Argument, which I fight against: 'tis they who din us in the Ears with a Language which makes us fhiver, and who inceffantly tell us, that the Marquis de Gesures is an Impostor, and a perjurd Man) I ask them, I say, what their Reasons are for honouring that young Nobleman with fuch pretty Epithets. What ! is it a thing incredible, that the Marquis de Gesvres passing whole Nights with a lawful Spouse, should attempt to confummate his Marriage, when such Confummation fecur'd him feventy thousand Livres annual Rent? Surely, tho' the Marquis hadnor faid it, we ought to hold his Artempts as certain. With how much fronger Reason are we with held from doubting it, when his Confession agrees with the Probability refulting from the thing it felf? But let them give his Confession what Force they please, we have Condormition, and that's enough for us, because Condonmition is a Proof built upon two unmovable Foundations, Necessity and the Law. Necessity, because cis impossible otherwise to penetrate the secret History of a Marriage. Law, because of the Force it imparts to all Proofs which it espouses, or (to speak better) canonizes.

This being so, I say that the Proof which will redound from the Virginity of my

Client,

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Client, will be a conclusive Proof. The Law has coupled the Proof of Approaches to that of Condormition: Therefore the Approaches are manifest, so soon as Condormition is made out; and if they are manifest, it is as manifest that my Client's Virginity is not an Effect of Continency, but Impotency, in the Marquis de Gesores.

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Behold therefore the Marquis de Geswes's Frigidity ready to be made manifest by the Visit I demand; and if he tells me that Frigidity is not evidenc'd till after three Years Co-habitation, and that his wants some Months of three Years, I answer, He's deceiv'd, and that even according to the Canons, our Gause is none of those which require a triennial Co-habitation. But because this is a Point of Importance enough to merit a particular Discussion, I intend to handle it separately.

After this, whither can the Marquis de Gesves fly for Resuge? He has been shewn that Frigidity in general is nothing but a Configuration naturally and habitually cold, and therefore that it was impossible to adjudge his particular Configuration to be exempt from Frigidity, for the single

Reason of its being a Configuration.

He has been shewn, that all the Physicians, all the Canonists have admitted it for an undeniable Principle, that Configuration does not reach so high in point of Proof;

Proof; that none of em has prefund the contrary Paradox cou'd be advane'd; nor that any Body ever made a tender of motionless Organs for Warrants of Virility.

He has been shewn, that in all times, and according to the Testimony also of those who have written upon this Subject, Figure without Motion, never went for more than a Body without a Soul.

He has been shewn, that it was upon this Foundation his Configuration was re-

jected by our Searchers.

He has been shewn, that after this Rejection, he cou'd not produce the least Degree of Proof in his Favour, no, not fo much as Presumption; doubtless because the Searchers Objection was a Judgment pronounc'd upon his particular Person, and particular Proofs always furmount general ones, which are no more than Presumptions, or rather Common-places.

He has been flewn, that ev'n supposing he can make his Configuration pass for a general Prefumption, fuch Prefumption cannot hinder my Client from being admitted to prove the contrary by the Visitation the asks; and this, by the very fame Rule I just now mention'd, viz, general Prefumptions always bow the Head to conans, all the Conomilla have

trary Proofs.

He has been shewn, that the contrary Proof resulting from the Visitation offer's and

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Mademoiselle de MASCRANNY. 111
and demanded by my Chient, is a canonic
cal Proof us'd in the Church, in St. Cyprian's
time, confirm'd by like Usage from St. Cyprian, to Gregory VIII. authoriz'd by that

Pope, and perpetually practis'd from his

time to ours.

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r'd nd He has been shown, that if such Proof is of some cost to Modesty, it wou'd cost Modesty infinitely more, if she were to remain perpetually expos'd to the Sallies of an Impotent, which are so many Sins against Nature.

He has been shewn, that an Examen, which is necessary to put a Stop to the Profanation of a great Sacrament, is no Offence to the Dignity of that Sacrament, and that on the contrary, the more venerable the Sacrament is, the more necessary is such an Examen.

He has been shewn, that the Tokens of Virginity are not Ideal and Chimerical, that they are founded upon themost affured Demonstrations of Anatomy, taught by Zachias, Pineus, Moriceau, and infinite Numbers of others. And that if the Spirit of Contradiction (which is what all the Dust of the School is rais'd from) has put some speculative Heads upon coining in the Gloom of their Closets some new Opinions upon this Subject, it would be a ridiculous thing to condemn all Antiquity upon the Credit of their Ideas; and yet more ridiculous culous

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culous to abrogate our Laws, our Canons, our Ulages, our Practice, and Judicial Proceedings for the Fantaftic Meditations

of some private Doctors.

He has been shewn, that not any of the Episcopal Courts of France have suffer'd themselves to be bully'd by the Noise these Innovations have made in the World; that in the Jurisdiction of the Parliaments of Aix, Grenoble, Dijon, Touloufe, Rennes, the Practice of verifying the Husband's Impotency, by the Wife's Virginity, was as common a Practice as that of verifying a local thing by a View of the Place, and there's no doubt but the same is done in all the other Parliaments, fince the Abolition of the Congress does no longer leave any other Door open but this to come at the As for the Parliament of Paris, and this Officialty in particular, the Examples which have been brought to make out this Ufage, are so evident and decisive, that the subtilest Head in the World cannot find out the minutest Difference between their Case and ours. A radiso lo aredmuil

We have likewise shewn the Marquis & Gefores, that he fet up a falle Principle when he advanc'd, that the Secret of Vir ginity cou'd not be meddled with, unles the Husband confented, that this Principle (as well as all the others which he has broach'd) took Rife from nothing but an

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Mademoiselle de MASCRANNY. 113

Imagination grown ingenious by Necessity, that to admir such a Doctrine, one must have lost one's Reason; and that accordingly the foregoing Precedents are enough to shew that the Judges consult mone but the Wife, when the Point in Dispute is whether the Proof of Virginity shall be admitted.

He has been shewn too, that taxing a Wife with a vicious Organization, is not the only Case wherein it has been the Custom to subject her to Examination; and that she is no less subject thereto, when the Business in hand is solely to know, whether she be a Virgin, thereby to evince the

Husband's Frigidity.

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To conclude, it has been shewn, that this Consequence is direct and conclusive; the Wife is a Virgin, therefore the Husband is insufficient; at least that it is conclusive, when the marry'd Couple have pass'd whole Nights in the same Bed, because then the Attempts of Consummation are evidenc'd by a Legal Presumption, which stands in the Place of a Proof, when 'tis consecrated by an Ecclesiastical Law, and impossible otherwise to discover what happen'd within the Curtains.

You see, Gentlemen, my whole Cause in this short Recapitulation. But that I may present it to you in a yet plainer Epitome, what is it we dispute about? No-

thing,

thing in the World but to know whether Proof racitly or exprelly demanded by the Searchers, ought to be order'd. Behold the whole Point, behold the whole Diffculty. A Man must furely be a Duke and Peer, to make this Question a Subject for a Problem. The Marquis de Gesores de fires his Cause may be try'd by the same Rules, as are observ'd in the Cause of a private Citizen: I defire the fame with all my Heart, bur at the same time, I beg he wou'd fhew me by any one Precedent in Plebeian Cafe, that you ever refus'd w Searchers an Order like that I demand. I will be bold to fay 'tis a thing unheard of because the Searchers are the premier Judge, and because, as the Rota in one of its Decisions says very well, the Confidence of the second Judges wou'd have too much to take upon it felf, if in a thing of so great Consequence, it were not to disburthen it felf upon the Shoulders of the first Judges: Ninis enim oneratus effet judex, si in tam gravi quæstione aliquid ex ejus judicio penderet.

After this, it were orderly to fay some thing in Justification of my Client. For tho' her Request be grounded upon the Rules of the Church, yet that does not put a stop to the wrong Judgments, and rash Censures of the World. There are Women vain enough to fancy, that had they been that in my Client's Circumstances, they shou'd

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Mademoiselle de MASCRANNY. 115 have prefer'd an honourable Silence to a Noise ever subject to Interpretation; but without examining what they won'd have done, I say it is irreligious to be filent on fuch Occasions. I grant that when a Husband confesses his Infirmity, when he renounces the conjugal way of living, and reduces himself to a fraternal Amity, the Patience of a Wife may deferve the Name of Vertue, tho' the Practice of that Vertue is not without its Dangers. But pray had my Client the Liberty of chufing berween the fraternal Life, and the Step she has taken? Let them judge of it who know that the highest Ambition of the Marquis de Geseres is to seem what he is not sthis occasion de the frequent Condormition; his oblig'd him to put my Client within the Curtains, and this Cohabitation within the Curtains wou'd ftill torment the Confcience of my Client, had the not the Sanctuary of a Divorcement to fly to. Let the People of Gallantry, the loofe, the irreligious, blame my Client; 'tis their Trade: It ought not to be wonder'd at: But if that Religion which they are unacquainted with had shewn them a Gulph always gaping, and themselves upon the Brink of that Gulph, and always ready to fall into t unless they were continually flinging themselves out of Doors, they wou'd find, that the greatest Constancy wou'd at last

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be tir'd out; and that to think to avoid the Gulph by fuch withdrawings, wou'd be attempting to fwim over the Ocean:

I take no notice of the other Reasons in dependent of Religion, which left no room to deliberate upon the Course my Clien had to take. Tis enough that the Publica appriz'd of them, and that the deplorable Condition fhe has been reduc'd to, by living with the Marquis de Gefrores furnishes Chat for the Tea-tables of Paris Content with the Justice done her by the World on this Head; fhe is desirous to draw the Curtain over fo melancholy a Story thereby to make the Marquis de Gefores fen fible, that she reveres even the Figure of Sacrament, and honours the Embers of the Fire with which the once burn'd for him; nay, with which fhe had ftill burn'd if the Ignorance and Simplicity of her unripe Years cou'd have always lafted, and if the Prisons of Paris, St. Owen, and Gefores, cou'd have perpetuated so desiral ble a Condition; but alas! there's no guarding against the Lessons of Nature a Mistress who disappoints the most watch ful Spies.

To conclude: the Marquis de Geswa has nothing to complain of but his own Misfortune; his ill Fate is really to be pity'd. My Client pities him, and per haps more than he pities himself. She

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Mademoiselle de MASCRANNY. 117
wou'd be glad he were able to silence
either the Laws of Nature, or those of
Conscience: in either case, she were
ready to unite her self again to him.

INTERROGATORIES

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M. BEGON, Counsellor.
BENARD, Attorney.

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INTERROGATORIES of Monsieur and Madam de GESVRES: With proper Notes and Reflections upon the Principal Articles.

### TEXT.

INTERROGATORY upon Facts and Articles, exhibited by us An-THONY DORSANNE, Prieft, Doctor in Theology of the Faculty of Paris, Canon and Arch-deacon of Josas in the Church of Paris, Official of Paris, by Virtue of our Order of the 16th Instant, at the Request of Mademoifelle MARY-MAGDALEN-EMILIA de MASCRANNY, assisted as much as is requisite by Madam de CAU-MARTIN, and the Sieur Abbot de MASCRANNY, ber Guardians ad hoc, Plaintiff.

Wednesday 20th of April, 1712. at Eight in the Morning in the Bishop's-Court.

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# Mademoiselle de MASCRANNY. 119

#### Save yes, that he was very well and ARTICLE I.

Oncerning his Name, Sur-name, Age, Quality, and Habitation, after having taken an Oath to de-

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Says his Name is Joachim-Bernard Potier. Chevalier, Marquis de Gefores, Colonel of Horse, &c. aged nineteen Years and a Half, living in the Street St. Augustin, in the Parish of St. Roch.

#### II.

Whether there was not a Marriage contracted and celebrated between him the Respondent, and the said Mademoiselle Mary-Magdalen-Emilia de Mascranny, how long he has been married to her, and

whether his Marriage is valid?

Says that 'tis true that there was a Marriage celebrated and contracted between him the Respondent, and the said Mademoiselle Mary-Magdalen-Emilia de Mascranm; that the Marriage was celebrated the 2d of June, 1709, and thinks the faid Marriage very valid.

Whether before he was married he was appriz'd of the End and Purpose of Matrimony?

Says yes, that he was very well appriz'd thereof.

Oncerning his Name, Sur-name, Age, Out, Name,

Whether fince his Marriage he has done as much as in him lay to arrive at the Purpole of the faid Marriage, and whether he has confummated it?

\* Says that at present he can answer to no more of the Articles of the said Facts, forasmuch as they were not left at his House

# If the Marquis de Gelvres bad really confunmated his Marriage, was'd it have been more difficult for bim to remember it, than to remember bis Name, bit Age, bis Quality, and the Day on which his Marriage was celebrated? Why then does he demand Time, unleft it be either because twas not easy to determine so ha-Bily between the Interest of his Cause, and that of his Confeience; or because it was a slippery Step, and that the Answer he made to that Article, being to goven all the following, the Question deserved to be well confulted in an Assembly of his Relations, and in Present of Counsel. Thus when the Marquis de Getvres de manded a Delay, 'twas all one as if he had faid : low ask me whether I have confummated my Marriage! Truly I can't tell: but bard by there's a Cunning Man that knows all; I'll ask bim, and in three Days give you an Answer.

In vain he excuses himself upon account of the Multiplicity of the Facts; for that not having hinder him from answering to the three first Articles, neither ought it to have stopt him at the fourth, which was

fill more personal than all the rest.

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# Mademoiselle de MASCRANNY. 121

House till yesterday, at Eight of the Clock in the Evening, and that coming home very late, he knew nothing of the said Interrogatories till Morning; wherefore he demands a Delay of three Days to consider them, because of their Multiplicity.

Upon which, at his Request, we made an Appointment for next Saturday, at Eight

in the Morning.

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The present Interrogatories and Answers being read over, he says they contain nothing but the Truth, insists upon 'em, and has signed them —— Signed Dorsanne, & de Combes, Register.

But if we are desirous to know why he besitates, we need only see by the Interrogatory of Madame de Gesvres, why she does not bestrate. She was made acquainted with the first Facts on the 19th of September, to be interrogated early next Morning; she presents ber felf at the Hour appointed; and whilft she is Still before the Official, they ask her new Questions to be answer'd upon the Spot. Nothing could be better managed to perplex her, or to furprize a young Lady that was almost dying: for every body knows that her Sickness gave her no Respite. Yet, does she desire time? Far from it : she would not accept of the Respite which the Official offered her, and he takes no more time to study for Answers, than whilf he can read over the new Facts. Who inspired her with this Courage, or what could so much disconcert M. de Gesvres at the fole Word Consummation? Let any one judge.

G

INTERROGATORY made by us ANTHONY DORSANNE, &c. Off. cial of Paris, by Virtue of a Sentence of the 16th Instant, at the Request of Mademoiselle MARY-MAGDALEN EMILIA de MASCRANNY, affifted as much as is requisite by Madam de CAUMARTIN, and the Sieur Abbot de MASCRANNY, her Guardians ad hoc, Plaintiff.

> Saturday, 23d of April, 1712. Eight in the Morning.

#### ARTICLE I.

Oncerning his Name, Sur-name, Age, Quality, and Habitation, after having taken an Oath to deliver the Truth? Says, his Name is Joachim-Bernard Potior, Chevalier, Marquis de Gesures, &c. aged Nineteen Years and a Half, living in the Street St. Augustin, in the Parish of St. Roch.

#### IV.

Whether fince his Marriage he has done as much as in him lay to arrive at the End of the faid Marriage, and whether he has confummated it?

Says, he has.

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# Mademoiselle de Mascranny. 123

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Whether it be not true, that finding himfelf unable to confummate the Marriage, he spent the first Night in complimenting his Wife, without going about to consummate it, giving her to understand he was very much incommoded in his Stomach, by having eaten part of an Eel Pye.

\* Says, that that Night, finding himself very much out of order with a Sickness at his Stomach, occasion'd by having eaten part of an Eel Pye, he did not consummate

the Marriage that Night.

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#### VI.

Whether he does not know that his Valet de Chambre, who undoubtedly was some how inform'd that he the Respondent was unable to consummate the Marriage, said the next Day to one of the Chamber Maids

of

<sup>\*</sup> The Impotent never accuse Nature, but the first Accident that presents it self to their Imagination; and when nothing presents it self, 'tis the Devil that canses their Disgrace by the Interposition of some Sorcerer. If Monsseur de Gesvres had dared to accuse the Devil, the Eet pie had been very innocent, and 'tis easy to see this by the Impossibility there is, that a Meat, which is indeed no wife hurtful, should, on the Wedding-Night, have such a prodigious Effect upon a young Man of 17 Years old.

of the said Mademoiselle de Mascranny, that he did not think his Master had consummated the Marriage, because he had heard say that his Codpiece was tied up, which is a Sort of Sorcery?

Says, that he knew nothing of it, and

that he thinks it is forg'd.

#### VII.

Whether it be not true that, the next Day after he was married, being uneafy to find that he was unable to confummate the Marriage, he pretended to be Sick, and the better to make the faid Mademoiselle de Maseranny believe so, affected, at his Arrival at St. Owen, whither they went to spend part of the Day, to lie on the Bed till Eight in the Evening, when he rose to a Collation?

\* Says, that 'tis true that his Illness continuing all the next Day after he was mar-

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<sup>\*</sup> The Marquis de Gelvtes was so little troubled with his Illness all the next Day after he was married, that he eat all his Meals as he was used to do. He imitated the sick Man in nothing that was a Self-denial, and if he lay on the Bed all Day, it was, both because he was desirous to give the World a good Opinion of the Fatigues of the preceding Night, and to get an Excuse for lying alone the next Night. To put on Airs of Ability, and to lie alone, being the greatest Happiness of an Impotent. And to gain this, it was worth while to put a little Constraint upon himself all Day.

Mademoiselle de MASCRANNY. 125 ried, he was obliged, when he arriv'd at St. Owen, to throw himself upon the Bed.

#### VIII.

Whether it be not true, that being returned to Paris at ten a Clock that Night, he retired into his Apartment, where he lay alone, for fear that if he shou'd lie with the said Mademoiselle de Mascranny, she shou'd perceive that his Illness was feigned; and that to hinder her even from enquiring into his Health, he had the Precaution not to let her know that he wou'd not lie with her, which made her pass the Night without Sleep, and in continual Disturbance, lest she had given him cause to be discontented?

Says, that it is true that his Illness continuing he made Madam de Gesures acquainted with it, and went to lie in his own Apartment.

#### IX.

Whether it be not true that, perceiving that Mademoiselle de Maseranny did not know what was the Duty of married People, or the Consummation of Marriage, turned her Ignorance to his own Advantage, and spent the following Nights, Monday and Tuesday, in making her new Protestations and Compliments, and in embracing

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bracing her amorously, without going

about to confummate the Marriage?

\* Says, that the Fact is false, and that he consummated the Marriage, Monday and Tuesday; that as to the pretended Ignorance of the faid Mademoifelle de Gefores he thinks he needs fay nothing upon that Article.

Whether it be not true, that the faid Respondent, setting out for the Army at ten a Clock on Wednefday Morning, testified all the Tenderness imaginable to the said Mademoiselle de Mascranny, and how forry he was to leave her; and to give her more sensible Marks of his Friendship, writ to

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<sup>\*</sup> Is not this Portrait expressive of the Caresses of an Impotent? Now who could teach a Virgin to describe them fo exactly? But what is still more wonderful is. that the Marquis de Gelvres, after having cheated bis Wife, has cheated himself. He certainly imagin'd that the Caresses mentioned in this and some other Arvicles, were so many Consummations: for the Impotent make up in Imagination, what they want in Reality, and 'tis thus that Nature makes them amends. This is probably the Reason why he so readily affirms, that he bas confummated. As for the rest, the Mysteriousness which be affects in the latter part of his Answer, serves only to shew that the Counsellor has lent him this Wit. But whether this Wit he borrowed or no, Mademoifelle de Gesvres destroys all Mysteriousness, by offering, without Mystery, to prove her felf a Virgin. her

Mademoiselle de MASCRANNY. 127 her during his Absence, two or three times a Day?

\* Says, that this Article is true.

#### XI.

Whether he does not know that the Duke de Tresmes, his Father, went the next Day after his Departure, to wait upon Mademoiselle de Mascranny at her Toilette, to inform himself about what had passed between 'em; but finding her little acquainted with such things, and thereby judging that she was not likely to complain of the Condition of the said Respondent, (his Son) who he knew was unable to consummate the Marriage, he retired without giving her any surther Information upon that Head?

† Says, that he has no knowledge of the Fact contain'd in that Article, and that G 4

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† Tho' this Fast is denied, yet it bears a Charaster of Probability, which gives us no room to doubt of its being true. And, indeed, where is the Wonder for the

Duke

<sup>\*</sup> The Marquis de Gesvres had not then been long enough a Husband to neglect the complimental Part of Wedlock. From hence proceeded those Demonstrations of Sorrow, and those frequent Letters mention'd in this Article: but he was at no great Pains for these Letters, for he had with him a Governor, who was at the whole Expence of them, and all the Marquis's Gallantry consisted in following his Advice.

he had heard his Father the Duke of Tresmer say, that it was false.

#### XII.

If it be not true that the same Made-moiselle de Mascranny, being informed that the said Respondent would shortly arrive from the Army, went to meet him, according to his Request, and that being at Bourget, where she stay'd for him, Madam de Revel, her Aunt, (who came with her,) and the other Persons, took all Opportunities of leaving them alone, thinking that in so doing they oblig'd the Respondent; and that when they were alone, there passed nothing particular between 'em, the said Respondent contenting himself with making great Shows of Endearment?

\* Says, that this Article is true, and that there passed nothing particular between him and the said Mademoiselle de Gesures, because the Place was not proper.

Duke de Tresines to marry his Son, notwithstanding that he knew of his Impotence? If the Impotent statter themselves, tho' they ought to know themselves better than any body, the Fathers of the Impotent may much more statter themselves.

\* A Husband of 17 Years old, that has pass'd but four Days with his Wife, and who after five Months Absence, being alone with her, examines whether the Place is proper, is surely the most improper. Husband

that ever was.

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#### XIII.

Whether it be not true that the same Day, being arriv'd at Paris, the faid Respondent lay with her, pass'd the Night in Careffes, and new Demonstrations of Fondness without going about to confummate the Marriage?

\* Says, that the Fact is false, and that the faid Night he rendred her the Duty of Marriage.

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#### XIV.

If it be not true, that during his stay at Paris, which was from St. Martin to May following, the faid Respondent lay four or five times a Week with the faid Mademoiselle de Mascranny without having ever confummated the Marriage, contenting himself with embracing her tenderly and feeling her?

<sup>\*</sup> What does the Marquis de Gesvres mean by his rendring her the Duty of Marriage? The Word Duty is a loofe Term, and fignifies what one pleases; perhaps in the Language of the Marquis de Gesvres, it means those restless Bustlings of Impotence, which Policy suggests, and Nature abbors. Perhaps too, by this ment Interpretation, he thought to avoid forfwearing himfelf.

\* Says, that it is true that he lay with her all that time, and that he often rendred her the Duties of Marriage.

## XV.

If it be not true that the faid Respondent being arriv'd from his fecond Campaign at St. Owen, where the faid Mademoisele de Mascranny waited for him with the Duke de Tresmes some Days before that of St. Martin, he lay the very Night of his Arrival with the faid Mademoiselle de Mascranny, and that he spent the Night, as he was us'd to do, in careffing her; but with this difference, that he took great Care to wrap himself up in his Shirt, and had the Precaution to hold the said Mademoiselle de Mascranny by the Hands, because she had writ him word, when he was at the Army, that the had been at the Marriage of a Lady of her Acquaintance, who had taught her a great many things which before the was ignorant of?

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<sup>\*</sup> Here are seven whole Months of noturnal Co-habitation, during which, the Marquis de Gesvres could not dispose of his Person any otherwise than the Impotent dispose of themselves. What is to be hoped for from him after this?

Mademoiselle de MASCRANNY. 131

\* Says, 'tis true he lay with her that Night, and render'd her then the Duties of Marriage: but that the rest of the Article is not true.

#### XVI.

Whether it be not true, that during the fix Months the said Respondent lay with the said Mademoiselle de Mascranny whilst he staid at Paris, he cou'd not consummate the Marriage, tho' he often went about to do it, always giving over after having hugg'd and embrac'd the said Mademoiselle de Mascranny, and nothing else.

Says, that the Contents of this Article is

not true.

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<sup>\*</sup> This is an Impotence so compleat, that we may say it is an Original, and that Madame de Gesvescould not fetch the Idea of it either from her self, or from Books, or from the Tradition of Persons subject to make such Experiments. What she says, then, must needs be true. And after all, where is the Dumon that could invent, that the Marquis de Gesvres, was so well perswaded he was dead, that he made himself a Winding-sheet of his Shirt! What infernal Spirit could surnish the Image of those imprison'd Hands? And 'tis observable, that as Madame de Gesvres had then made some Progress in the Theory, he was obliged to take new Precautions to hinder her from sinding out how far the Impotence of her Husband extended, and how incurable it was?

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Whether it be not true, that when he went about to confummate the Marriage, he felt great Agitations, and that always. finding himself unable to perform the Action of Marriage for want of Erection, he gave over without doing any thing?

\* Says, that this Article is not true, and that the faid Mademoiselle de Geswes must needs remember to have often felt the

Effects of Erection.

#### XVIII

Whether it be not true, that the Duke de Tresmes, well knowing that the said Respondent, (his Son,) was impotent, had shew'd himself very much concerned at the want of Consummation, and had often discoursed with the said Mademoiselle de Maseranny upon that Subject, and had testi-

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<sup>\*</sup> It is impossible but that there may remain in the Impotent some Movements of Concupiscence, other wife they, would not be of the Generation of Adam, but as those: Movements are frustrated of their Effect, the Concupiscence irritated and not satisfied, turns into Rage and. Fury. And from thence proceed those Agitations, mhich Madame de Gelvres here describes. Once more, where could fee have learnt these Adings of Impotence, unless it be in the Portrait that she had of them in. M. de Gelvres.

fled his uneafiness to his Son, who being disturbed at it, had desir'd the said Mademoiselle de Mascramy not to speak any more of it to his Father, to which she replied, that it was not she who spoke of it; but the Duke of Tresmes himself, who daily question'd her upon that Article, and that he shou'd desire him not to speak any more of it, for that she wou'd not?

\* Says, that he knows nothing of this Article, and that he had only heard his Father say he had talk'd privately with the said Lady, but never concerning the Impotence she complains of, the said Duke de Tresmes being persuaded of the con-

trary ..

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#### XIX.

Whether it be not true, that the said Sieur de Tresmes did often, in private, sollicite him the Respondent to do his En-

<sup>\*</sup> Let any put themselves in the Place of the Duke de Tresmes, and of Monsieur and Madame de Gesvres, and they will find that an impotent Husband, the Father and Wife of that Husband, are very likely all three to all and speak just as it is said in these Articles, they aded and spoke. It is necessary then, to have gone thro' such a Trial to represent those three Charasters so naturally. And besides, we see in the Intervogatories of Madame de Gesvres, why the Duke de Tresmes, notwithstanding he was convinc'd of the Impotence of his Son, did however. admonish him to do his utmost.

deavours to arrive at Confummation, and did even defire the faid Mademoifelle de Mascranny to make some Advances on her fide, but that he tried in vain to arrive at Confummation, finding himself in a natural Impotence to do it?

Says, that the Fact contained in this

Article is entirely falle. a mile buoni

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Whether it be not true, that the Rumour of the Impotence of the faid Sieur de Gefores beginning to grow publick, the Duke de Tresmes, fearing lest the said Mademoifelle de Mascranny shou'd complain of it to her Relations, and that they shou'd take Measures to null the Marriage, turned away from her Service Mademoiselle Gaulthier, her Governess, and all her other Domesticks, to the Intent that she might have no body that she cou'd confide in to complain of her Condition?

\* Says, that there is nothing true in this Article; but that the said Sieur de or expert of that theretain, are very analy all thirty Trefines

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<sup>\*</sup> Mademoiselle Gaulthier being so suddenly turned away, is not, indeed a thing of the most deci-five Nature, but however it is of a Piece with the rest of the Proofs, for Mademoiselle Gaulthier could not difplease the Duke de Tresmes, any otherwise than by being under

Mademoiselle de MASCRANNY. 135
Tresmes turned away the said Mademoiselle de Gaultbier, and two Lacquies, because he was not satisfied with their Service, and in no respect for the Reasons contained in the Article.

# XXL

Whether it be not true that, for the same Reason, she was sent to Gesures, a Fortnight after the Departure of the said Respondent for the Army, under Pretence that the said Respondent being oblig'd to be at great Expences in the Army, it was necessary for her to retire into the Country, that she, on her part, might be at as little Expence as possible?

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\* Says, that 'twas not for the Motive mention'd in the Article that the faid Lady

was

under too great Obligations to the Relations of Madame de Gesvres, and because they above all things desired to conceal from those Relations the Condition of Monsieur de Gesvres.

<sup>\*</sup> In order to shew that the consining her at Gesvres, could have no other Motive but that mentioned in the Article, it is necessary to give a superficial Idea, both of the Reasons which obliged the Duke de Tresmes to get thither the said Madame de Gesvres, and of the Insecibility with which he tried to keep her there. Twas in the Month of June, 1711. that she was banish dinto that Solitude (for so the Marquis de Gesvres did himself call it before a full Audience.) Now it must

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was sent to Gesures, but for other good Reafons, which it wou'd be useless to recount here,

must be observed that Gesvres is situated in a Marshy Country; 'tis a Place unwholefome in Summer, cloudy in Winter, and almost always infested with popular Difeafes, which raged there at the time when Madame de Gefvres was carried thither : And the was there attacked with the Purples, the Small-Pox, and the Meazles, without reckoning the Fever, and an infinite Number of more alarming Symptoms, Juch as Vapours, Swoonings, Faintings; she might even say, that in the ten Months the staid there, she was not a quarter of an Hour without a Fever or some other Illness; therefore he was almost dying when she returned from thence. We may represent to our selves the Condition she was in, in the midft of a Defart, without Ashistance, without Comfort; without Remedies, without any Eafe; and, which is more, without the Sustenance proper for a fick Perfon, it being out of her Power to have with her a Phyfician of Paris, except at last, when the Duke de Trefmes sent one, presently after be had heard that Madame de Caumartin bad dispatched one to her. We may well imagin that, in the disconsolate Condition Madame de Gesvres was in, she was incessantly imploring the Mercy of the Duke de Tresmes, in order to obtain the Favour of returning to Paris, without which she despaired of her Life. But the Duke de Tresmes was inexorable. Now let bim fay, it was out of a Spir vit of Parcimony, that he endanger'd the Life of a Daughter in Law, who brought fuch a great Effate in to bis Family. Certainly there can be nothing of Oer conomy in this Conduct, and every one may fee mby. But, says the Manquis de Gesvres, He had other good Reasons, which it would be useless to recount. Here again speaks the adventitious Spirit; behold the Oracle:

Mademoiselle de MASCRANNY. 137 here, and that the avoiding of Expence was one of them.

#### XXII.

Whether it be not true, that the real Motive of that Journey was the Apprehension of her taking Measures with her Relations, who were then informed of the Impotence of the said Respondent, and that the said Sieur de Tresmes sent her word by one of her Kindred, that if she wou'd say she was contented with Monsieur de Geswres, and that he was really her Husband, she shou'd not go to Geswres.

Says, that as to the Motive of sending the said Lady to Geswes, he has explained himself in the preceeding Article, and that as for the latter part, he has heard his Father, the said Sieur de Tresmes, say, that

the Fact was false.

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Oracle which expresses it self in Anigma's and Mysteries: but if the Marquis de Gesvres, at the time of his Interrogation, might all the mysterious part, at the Expence of Madame de Gesvres, he cannot do so now, since Madame de Gesvres demands to prove that she is a Virgin. This Proof, which she not only offers, but even demands, is of more Weight than those good Reasons, which he will not recount. Since then, neither Occonomy, nor those good Reasons, could make her be imprison'd at Gesvres; it follows that that Captivity must be the Effect of some secret Policy, and what is that Policy? unless it be that express'd in the Article.

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## XXIII. chem to sno sew

Whether he does not know that she was follicited by the Duke de Tresmes, or him the Respondent, to write Letters' during her stay at Geswes, by which she should acknowledge that she was contented with the Marquis de Geswes, and that he had used her as a Wise, and that they promised, if she wou'd do that, to let her return to Paris?

Says, that he himself knows nothing of this Fact as to that part of it which regards his Father, the said Duke de Tresmes, whom he has lately heard say it was false; and as to that part of it which regards him the said Respondent, he avers the Fact is entirely salse.

#### XXIV.

Whether it be not true, that the said Respondent, being returned from his Campaign to Paris, about the eighteenth of twentieth Day of October, 1711. Went to Gesures to see the said Mademoiselle de Mascranny on the Eve of All-Saints Day with the Abbot de Bois-Franc, his Uncle, whither the Abbot de Mascranny, Uncle to the said Mademoiselle de Mascranny, came some Days afterwards; he lay the Night of his Arrival with the said Mademoiselle de Mascranny without consummating the Mascranny without consummating the

# Mademoiselle de MASCRANNY. 139

Marriage, contenting himself according to his Custom with caressing and feeling her without attempting Consummation, finding himself unable either for want of Erection, or for some other Cause, which she knows nothing of?

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|| Says, 'tis true, that at the Time mentioned in the Article he came to Gefores, and lay with the faid Lady; but that for the ten or twelve Days that he stay'd there he render'd her the Duties of Marriage.

XXV.

It must here be observed, that by the Marquis de Gelvres's own Confession, be stay'd but ten or twelve Days at Gesvres with his Wife; by Consequence then, he foon return'd to Paris, and this deserves Reflection: for the Duke de Tresmes, in his Justification, printed and handed about a Letter, written to the Marquis de Gesvres by the Abbot de Mascranny, Uncle to Madame de Gesvres; and as, amongst other Lessons of Frugality, which the Abbot de Mascranny in that Letter gives to the Marquis de Gelvres, he advises him to carry his Family for some time to Gesvres, in order to avoid the Expence of keeping it at Paris; the Duke de Treimes infers from this, that 'tis by the Uncle's Advice, that the Niece was confin'd to Gelvres. As if it was in Obedience to the Advice of the Uncle, that they almost suffer'd the Niece to perish for want of Necessaries, in the midst of a desolate Country, whilst the Husband Spent his time at Balls, Plays, and Mafquerades at Paris, spending more in a Day for his Pleasures, than the Neice did in a Month for Necessaries. If'tis the Letter of the Abbot de Mascranny, that put the Duke de Tresmes and the Marquis de Gesvres upon this Conduct, it must be confessed that Madame de Gesvres reap'd strange Fruits from the Oeconomy-Systems of her Uncle.

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#### XXV.

Whether it be not true that the new Morning as he was going out of his Chamber, Madam de Rassicod having asked him, If he had done his Wife well over, after having been so long absent from her? He replied, Ask my Valet de Chambre, and he will tell you: And that the Valet de Chambre immediately said in the Presence of him the Respondent, that the Marquis de Gestres had told him as a Secret, that he had roger'd the said Mademoiselle de Mascrams seven times that Night, tho' he did not so much as go about to consummate the Marriage, being unable to do it, but only fondled and grop'd her as usual?

\* Says, that the whole Fact contained

in this Article is forg'd.

#### XXVI.

Whether it be not true, that he the Refpondent did cause a Report to be spread, that the said Mademoiselle de Mascrann was with Child, and that he must look out for a Nurse, and this to put a stop to the

Railleries

<sup>\*</sup> This Fast is so natural and suitable to a young Lord, when a puzzling Question is put to him, that tis impossible for Madame de Gesvies to have invented it.

Mademoiselle de MASCRANNY. 141
Railleries which the World made on his

Impotence?

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\* Says, that 'twas she the said Mademoiselle de Geswes her self that told him the Respondent she thought her self pregnant, that she also told it to Madam de Rewel, and to several of the Domesticks.

#### XXVII.

Whether it be not true, that he staid five or six Days at Gesures at the time of that first Journey, and that he lay every Night with the said Mademoiselle de Mascranny, without being ever able to consummate the Marriage, and that for fear she shou'd perceive his Impotence he took great Care to wrap himself up with two or three Pair of Trowzers and Breeches on at a time when he was up; and when he was with her in Bed he did the same with his Shirt, always taking the said Mademoiselle de Mascranny sast hold by the Hands?

t Says, that he has answer'd this by the 24th Article, and that as for

† The same Reflections may be made upon this as up-

n the 15th and 16th Articles.

the

<sup>\*</sup> Among k all the Impotents, (whose Marriage has seen dissolved) and who have articulated and averr'd the Consummation of Marriage, there are few but what have also articulated some pretended Lyings-in, or some appearance of Pregnancy.

the latter Part of it, the Respondent never wrapped himself up with Trowzers, or with his Shirt; and that it is a fictitious Story. Refoondantishe thouselse her

#### XXVIII.

Whether it be not true, that returning to Gesvres to see the said Mademoiselle de Mascranny, he spent four Days with her in the last Christmas Holidays, and lay with her without confummating the Marriage, having passed the Night with her as usual.

Says, that 'tis true that he went to Geswes at the time mentioned in the Article, and lay with the faid Lady, but that he render'd her the Duties of Marriage.

#### he was up :XIXX here he was with

Trow zers and Breeches on at a time

Whether it be not true, that the faid Mademoiselle de Mascranny represented to him that her Relations (who were angry at her being detained at Gesores in a very un-wholesome Air, in Danger of her Life, where fhe has fince had two dangerous Fits of Sickness) had commanded her to give them an Account how the lived with Monthe Conformation of Mariage, there are for has what ſi

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<sup>\*</sup> The Marquis de Gesvres pays his Wife, then Prisoner at Gesvres, a second Visit of four Days: we may make the same Reflections as on Art. 24.

Mademoiselle de MASCRANNY. 143
fieur de Gesures, and to inform them whether it was true that he was impotent, and had not consummated the Marriage, as the Report went; and that upon this the said Mademoiselle de Mascranny being in Bed with him, asked him what Answer he would have her return to her Relations; to which he replied, 'Tis very perplexing, and only said Yes and No several times over.

is Says, 'tis true, that the said Lady was sick at Geswes, but that the rest is false and

invented. Alore A advait bandonem evice M

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Whether he did not perceive, that the faid Mademoiselle de Mascranny, towards the End of the three Years of their Marniage, sometimes avoided lying with him under divers Pretences, and whether he does not know that the true Motive was, that 'twas by Order of her Father Confessors, who had forbid her to lie with him, having given her to understand that her Salvation was in danger, because she cou'd not live with him the Respondent

with

<sup>†</sup> Amarried Impotent is always divided between two contrary Defires. He would fain be rid of a Wife that is a Burthen to him, but he does not care to own himfelf Impotent, and from hence proceeds the Irrefolution of the Marquis de Gelvies, so well describ'd in this Article.

with a safe Conscience, and that 'twas for the same Reason, she resolved, against her Inclination, to demand to have her

Marriage annull'd?

\* Says, 'tis true that the said Mademoifelle de Mascranny did sometimes avoid lying with him the Respondent within the
Time mention'd in the Article; but that
he looked upon that Conduct only as
Spleen and ill Humour, and that he was
far from thinking it proceeded from the
Motive mentioned in the Article, because
he had several times consummated the
Marriage.

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<sup>\*</sup> The Duke de Tresmes, in the printed Letter of the Abbot de Mascranny bas joined to it a Marginal Note, in which be infinuates, that the Marquis de Gesvres separated bimself from the Company of kis Wife, only because be was not well receiv'd by ber, when be gave ber a Vifit at Gesvres; that Note bus some Relation with this Article, for we bere see the Reason why Madame de Gesvres did not give Monsieur de Gesvres a gracious Reception. The Approach of a sham Husband comot make the same Impression upon the Mind of a Wife, as the Presence of a real Husband does; and even tho' a Wife could put such a Constraint upon ber self, as to appear what she was not; yet even Religion would hinder ber from so doing, because it is not lawful to invite an Imposem to a Co-babitation equally abborred by God and Na ture.

## XXXI and defined orel

Whether he does not own his Marriage to be justly annull'd because of his Impotency?

Says, No; and that the faid Lady well knows that nothing can be so false as the Impotency by her alledg'd against him.

#### XXXII.

Whether he will abide by the Searchers and the Witnesses, who know of his Impotency, and of the Facts before-mention'd?

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XI

\* Says, that he will willingly abide by the Searchers; but that as for the Witnefses, he looks upon the Demand as impertinent.

Being interrogated upon the first Article of the two Facts, signified to him Yesterday, by way of Addition; he said, that, for as much as the said Facts were not exhibited to him till Eight a Clock Yesterday Evening, he could not examine them, and is not prepared to answer them, he there-

<sup>\*</sup> The Marquis de Gesvres looks upon as impertinent, the Proposal that Madame de Gesvres makes to abide by the Witnesses. And yet be proposes in his Facta to abide by those, who, he says, have seen him in a state of lessel Ability. He should remember the Censure be bere pronounces against Testimonial Proof.

fore defired that another Appointment might be made for next Tuesday; so that at his Request, we have made an Appointment for next Tuesday at Eight in the Morning.

The present Interrogatories and Answers being read, he says his Answers contain nothing but the Truth, perseveres in them,

and has figned.

#### INTERROGATORY exhibited by us Anthony Dorsanne, &c.

Tuefday 26th of April, 1712.

Eight in the Morning.

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FIRST concerning his Name, Surname, Age, Quality, and Habitation, after having taken an Oath to fay nothing but the Truth.

Says, his Name is Joachim Bernard Potier, Chewalier, Marquis de Geswes, &c.

#### ARTICLE I.

Whether he had not formerly a Rupture, with which he was very much incommoded, and was in the Hands of a Surgeon of Paris, and afterwards in those of a Woman, who applied Plaisters to his natural Parts, in order to cure him of that Rupture?

\* Says,

## Mademoiselle de MASCRANNY. 147

\* Says, that he had once a Rupture, of which he was cured, and that at present he suffers no Inconveniency upon that account; that having had the said Rupture at the Age of two Years, he should not have the least Remembrance of it, if the Persons who bred him up had not told him of it; that he was so perfectly cured of it, that he performed all his Exercises in the Academies without seeling any Remains of it, and that he, the Respondent, has been told that he never had any Plaisters applied to his natural Parts.

#### II.

Whether since he was in the Hands of that Woman he has felt no Ail in his natural Parts, that might hinder their Fundions, or at least, whether he has no Remains of it?

Says, that he never felt any Ail, as he inflwered to the preceding Article.

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III.

<sup>\*</sup> The Impotency of the Marquis de Gelvtes is of so thraordinary a kind, that 'tis hard to conceive bow Nawe in forming him, could so entirely forget that she was forming a Man. For this Reason the History of his Life was searched into, to find out the Cause of so surprizing messel, and we thought we had met with it when we distreve at the Rupture and Plaisters; and perhaps we are not leceiv'd; but whether we are or no, the Cause is indifferent so the Effect be certain.

#### ex Sayet char he bed once as hustane. if which he was cure and that at he

Whether it be not true, that the Plaisters of the Woman who had him in hand, being in all likelihood compos'd of aftringent Medicines to retain the Parts which caus'd the Opening in the Rupture, did not affect the Testicles, and shrink up the Nerves which served for Erection of the Penis -So that he was no longer capable of Ereation?

Says, that the Fact is false.

#### IV.

Whether he knows of no other Defects in his Person to make him unable to confummate the Marriage, and to hinder Erection and Ejaculation?

Says, that he knows of no Impotency in himself, and that he has consummated the Marriage as he said in his preceding Interrogatory.

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Whether it was not that want of Erection, which hindred his confummating the Marriage, tho' he often went about to do it?

Says, that he has answer'd this Article by his preceding Interrogatory.

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#### Mademoiselle de MASCRANNY. 149

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Whether he will not consent to have the said Mademoiselle de Mascranny visited, in order to justify what he advances, and to put a stop to the Report of her being still a Virgin?

Says, that the Proposal is so contrary

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All the Facts laid down by Madame de Gesvres, center in this, that the Marquis de Gesvres has not consumnated the Marriage. And this is very natural, because it is impossible for a Wife that was a Virgin, when she was married, to be able to judge of the Capacity or Incapacity of her Husband, any other wife than by his Operations. On the contrary, all the Marquis de Gesvres's Answers terminate in this Supposition of the Fact, that he has several times consummated. Now two Reflections may be made mon this. First, So soon as ever the Dispute between the Husband and the Wife, was reduced to the fole Point of consummation or Non-consummation, the Wife could not confound the Husband better than by saying, I am a Virgin, and am ready to prove it. And the Husband, on bis side, could not make a plainer Acknowledgment of his Imporency, than by testifying such an Abomination of that Proof, as be does in his Answer. This is down right speaking. Secondly, So soon as 'tis granted that all the facta and Answers unite in the Point of Consummation. W Non-consummation, it is evident the Searchers who vified the Marquis de Gesvres, ought thereby to judge of his Capacity or Incapacity. For as the Sentence that consituted them Searchers, wills that they should form their Decisions upon those Facta and Answers, it also wills that they should decide concerning Consummation or Non-con-H 3 Summation.

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to Decency and Modesty, that he need make no Answer to it.

#### Whether he will my confent to bave the

Whether it be not true, that his Reasons to hinder the said Mademoiselle de Maseranny from being visited, are only specious Pretences which he uses to conceal the Truth of the Marriage not being consum-

Says, no; he having confummated the faid Marriage. the Market Literate by the the the

Jummation. Since that is the only Fast in Dispute, and affirm'd on one fide, and denied on the other. If this be so, those Searchers might make themselves Judges of the Consummation, by arguing from the Act or Non act, to the Sufficiency or Insufficiency. And when they have done this, far from exceeding the Terms of the Semence, as some would have it believ'd, they have exactly followed the Lef-Jon that the Sentence prescribed them. In a word, the Sentence directed them to judge of the Sufficiency by the Facta, and all the Facta center in Consummation, as all the Lines drawn from a Circumference meet in the Center, and confequently the Searchers had nothing but that Fall to examine into, and by a still more necessary Consequence, upon that very Fall they might give their Opinion; otherwife thefe Words of the Sentence, to judge of the faid Impotency by the Fasta exhibited to the Defendant, and upon which he has been interrogated, wou'd be wholly useless. Consequent to encicle.

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#### VIII.

Whether it be not true, that, fince his Marriage, the Sieur de la Carliere, Physician, and the Sieur Dupré, Surgeon, came for a good while to fee him daily Morning and Night, and that every time they came and were in the Chamber of the faid Marquis de Gesvres, the Duke de Tresmes caused to be taken away, nay, did even himself take away the Key of the faid Chamber, which had a Communication with the Apartment of the said Mademoiselle de Mascranny, tho' the faid Marquis de Geseres then feem'd outwardly in a good State of Health?

Says, that this Article is entirely false.

The present Interrogatory and Answers being read, he says, they contain nothing but Truth, perseveres in them, and has fign'd, oc.

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INTERROGATORY of Mademoiselle de Mascranny, concerning the Facta and Articles to her exhibited, at the Request of the Marquis de Gesvres.

#### TEXT.

INTERROGATORIES concerning Facts and Articles exhibited by us Anthony Dorsanne, Priest, Doctor of Theology in the Faculty of Paris, Canon and Archdeacon of Josas in the Church of Paris, Official of Paris, by Virtue of our Order of the tenth Instant, at the Request of Mesfire FRANCIS JOACHIM BERNARD Potier, Marquis de Gesvres, Defendant, assisted as much as is necessary by his Father, the Duke de TRESMES.

Tuesday, 20th of Sept. 1712.

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#### ARTICLE I.

Oncerning her Name, Sur-name, Age, Quality, and Habitation, after having taken an Oath to de-

liver nothing but Truth.

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Says, her Name is Mary Magdalen Emilia de Mascranny, Daughter of Messire Bartholomew Mascranny, Master of Requests of the Hostel du Roy, aged 20 Years and a Half, living at the Religiouses of Calvary, in the Street of Vautgerrard.

Whether it be not true, that 'twas at the Perswasion of Persons of ill Dispositions, and who are Enemies to the Family of the said Marquis de Gesvres, that she engag'd in the Accusation of Impotency, which she has enter'd against him?

\* Says, that she did not do it at the Persuasion of any Body, but only for the Sa-

tisfaction

<sup>\*</sup> The Marquis de Gesvres ought to have let us know from whence that Enmity could proceed. But tho' he were fubtile enough to invent some Reason for it, is it not plain, that without Irreligion and Madnefs, it is impossible to make use of a false Accusation of Impotency, to satisfy a Movement of Enmity? If it he so, will be tretend to make the World believe, that the Family of Madame de Gesvres is capable of an Excess, which

Orders of her Conscience, and by the Orders of her Father Confessors, who have refus'd her Absolution ever fince she was married, because of the State in which she liv'd with Monsieur de Geseres.

#### III.

Whether it be not true, that at the time of her Marriage with the faid Marquis de Gesores she was aged 17 Years?

Says, yes.

which can belong to none but the Impious or the Frantic?

What is said here, that the Confessors of Madame de Gelvies, refused her Absolution, ever since she was married, because of the State in which she lived with Monsteur de Gesvies, is not contradictory to what she fays in another Place of her Ignorance; for that Ignorance did not binder the Confessor from refusing her Absolution. The Reason is this; a Confessor that directs a young Lady, newly married, seldom fails to dip into the Secrets of the Marriage Bed. He could not forget that of Madame de Gesvres, and 'twas by ber Ignorance, and several innocent simple Expressions, that the Confessor discover'd the Impotency of Monsieur de Gesvres. But, being prudent, he thought he sould not presently give her any Inkling of the Condition she was in; yet he did not think that Condition pure enough to be admitted to the Sacrament. This is the Reason why he refused her Absolution ever after she was married; which very much amazed Madame de Gelvies, who could not imagine the Cause of that Refusal: but when he arriv'd at a perfect Theory of the Thing, and the Mystery between the Confessor and her was cleared up, then the Confessor talk'd with ber in plain Terms.

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Whether it be not true, that the third and fourth Night after their Marriage they lay together, and that the Marriage was

confummated those two Nights?

Says, 'tis true that the third and fourth Night after their Marriage the faid Marquis de Gesores lay with her the Respondent: but that it is falle that he either then or ever fince confummated the Marriage. th true the at this time telli

#### enter a ercaveled of Tendens is

Whether it be not true, that, tho' young, the was not ignorant what Confummation of Marriage was? And why, in feveral Facts and Articles upon which she caused the said Marquis de Gesores to be interrogated, the affects to put on Airs of an Ignorance so little probable?

\* Says, it is certain that at that time she did not know what Confummation of Mar-Viceher it be not core, that sewipgein

Confirmmation, the one or bierent Carfinamations

<sup>\*</sup> It is no wonder for Mademoiselle de Mascranny to be ignorant in her Youth, of Mysteries, which were so carefully bid from ber. Thus she may fafely affirm, that she was a perfect Novice. Herethe Magnath Charles

#### VI.

Whether it be not true, that the Tenderness she shewed for the said Marquis, on the Wednesday following, at his Departure for the Army, and which she testified by her Letters during the whole Campaign, were the Consequence and Essect of the Satisfaction she had received from their

conjugal Union & M salt beragasilno

Says, 'tis true she at that time testify'd by her Letters a great deal of Tenderness for the said Marquis de Geswes; but that it was not the Effect of the Satisfaction she had receiv'd from their conjugal Union, but only because she thought it was enough that he was her Husband, that they had been before the Priest, and receiv'd the Benediction of the Church.

#### VII.

\* Whether it be not true, that at his return from the Army, about the Beginning of November, he lay with her the very Night of his Arrival, continued to do fo

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<sup>\*</sup> Here the Marquis de Gesvres boasts not only of Consummation, but also of frequent Consummations; how comes it then, that he is so very much averse to have Madame de Gesvies search'd?

Mademoiselle de MASCRANNY. 157 for two Months and a Half, and often per-

form'd the Duties of Marriage?

Says, 'tis true that the said Marquis de Geswres, at his return from the Army about the Beginning of November, lay with her the Respondent the very Night of his Arrival, and continued to do so all the time set down in the Article and more, but that it is absolutely salse to say that he perform'd the Duties of Marriage, whatever Efforts he might make to do it.

#### VIII.

\* Whether it be not true, that at that time she thought her self with Child, said so to several of the Family, and that it was so sirmly believ'd, that happening to sall down on her Knees in the guilt Closet at the Ho'tel de Geswres in Paris, the whole

<sup>\*</sup> Are there many Ladies of Madame de Gelvres's Quality, who, with Manners so unblameable as bers are, accuse their Hushands of Impotency, after having thought themselves with Child? Are there many, who, after such a Thought, desire to give Proof of their Virginity? But is not this Fall upon the Knees an admitable Invention? We know that Women with Child generally fall so. The Marquis de Gesvres therefore mou'd by that perswade us, that Madame de Gesvres was really with Child. Now if it be so, what is besome of the Fœrus, since 'tis owned that it did not go from her by Miscarriage?

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House was allarm'd at it, and that on St. Genevieve's-Day, they sent for the Sieur Enguehard, the Physician, upon that Occasion?

Says, that she never thought her self with Child, never told any Body that she was so, and that she don't remember that she sell down upon her Knees in the Place named in the Article; that if the Sieur Enguebard was sent for at that time, it must be for some other Indisposition.

#### IX.

\* Whether she will refer to the Persons who heard her talk in that manner? Says, that she will refer to nothing but the Truth, and that the Proposal is idle.

#### to Knex in the guilt Clotet

Whether it be not true, that at the End of the two Months and a Half the said Marquis de Geswres having for some time forborn to lie with her, she took it very ill.

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<sup>\*</sup> A fine Proposal indeed! she need only accept of it, and two beggarly Witnesses shall give Monsieur de Gesvies that Sufficiency, which the Faculties of Physic and Surgery could not do in the Six Months that they used their Endeavours to make him that Present, but in vain.

Mademoiselle de MASCRANNY. 159

Says, that her Conscience was too much violated when she lay with the said Marquis de Gesures, for her to take it ill when he did not come to lie with her.

#### XI.

Whether it be not true, that at his return from the Army about St. Martin's-Day, he lay with her at St. Owen, that as he was getting into Bed he smelt an ill smell in the Bed, that the said Lady told him it was some Tenches which were put to her Sides, and that notwithstanding the Disagreeableness of the Smell, he had the Civility to stay with her, and to perform the Act of Marriage?

Says, it is true that he lay that Night with her, the Respondent, at St. Owen; but it is very false that he at that time per-

form'd the Act of Marriage.

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# an decente of her than a ilix of a grow this was no

\* Whether she can so far flatter her self as to think any Body will believe her when she

Strange! The Tench restores what the Eel took

<sup>\*</sup> The Marquis de Gesvres does not ask if this Fact be true, but if his Adversary expects to be believed when he advances it; that is, he interrogates the Conscience

fhe fays, that, during all that time, she had been ignorant of the Condition of Husband and Wife, and that in order to be acquainted with it she had any need to go to the Wedding of a Lady of her Acquaintance, who taught her a great many things which before she knew nothing of?

Says, that she thinks she may flatter her

felf fo far, fince 'tis true. And yellor we

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gerting into Bed he imelt an ill

Whether, during the Winter of the Year, 1711. tho' for the most part of it, the said Lady did not give the said Marquis de Gesures good Usage, he did not lie with her often and perform the Duties of Marriage, till the End of April, when he set

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ef Madame de Gelvres, and would have her give him an Account of her inward Thoughts: now this was never heard of before in matter of Facts and Articles, wherein the Question is not to know what the Adversary thinks, but what has, or what has not happen'd. Madame de Gelvres therefore might have made use of the Language of the Law, and answered that the Question was impertinent, and not to be admitted. However, does she make use of it? Far from that, she replies without hesitating, that she may flatter her self to far since the Fact was true. This plainly shews the Truth to be of herside, for otherwise she might easily have declined the Perjury, by rejecting this Fact as useless, because of the manner in which it was laid down.

Mademoiselle de MASCRANNY. 161 out for his third Campaign, and the said

Lady for Gefores?

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Says, that it is not true that she gave the said Marquis de Geswes ill Usage; nor, that he perform'd the Duties of Marriage during all the time mention'd in the Article, whatever Endeavours he us'd, and tho' he often lay with her the Respondent.

#### XIV.

\* Why and by whose Counsel, not satisfied with falsly accusing her Husband of Impotency, she dares to injure the Duke de Tresmes, by saying in her Writings, and in her Facts and Articles, that he knew of the suppos'd Impotency of his Son, and whether such a Fact, which has no probability in it, is not invented out of pure Malice?

Says, she said that the Duke de Tresmesknew of his Son's Impotency only from what he himself said to her the Respondent upon that Subject.

<sup>\*</sup> Madame de Gesvres's Answer to this Article has some Relation with the eleventh Article of the Marquis de Gesvres's Interrogatory, and one serves to confirm theother; for the Truth, which is but one, never contradicts it self.

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\* Does not this abusive Falsity contradict it felf in the Facts and Articles, where we fee that after having basely suppos'd in the Eleventh and Eighteenth of the faid Facts, that the Duke de Tresmes knew his Son to be impotent, the alfo falfly fuppofes in the Nineteenth, that the Duke de Tresmes often sollicited his Son in private to do his Endeavours to arrive at Confummation?

Says, that it is easy to reconcile the Contents of the faid Article, and that the Duke de Tresmes, knowing of his Son's Impotency, follicited him to do his Endeavours to arrive at the Confummation of his Marriage, in order to perfuade her the Respondent, that that Impotency might

go off.

#### XVI.

When the advances, Articles XX, XXI, and XXII, that she was sent to Gesures upon account of the Report that begun to be fpread abroad of the fupposed Impotency of the said Marquis de Gesvres,

<sup>\*</sup> The Answer of Madame de Gesvres to this Article, has so much the greater Appearance of Truth, as in the House of an Impotent, all is Fiction, Policy, and Oftentation. and

Mademoiselle de MASCRANNY. 163 and for sear she shou'd complain of it to her Family, and they shou'd take Measures to annul the Marriage; is not this also a forged Supposition?

\* Says, that the Mouves, she set forth in the said Articles, of her Journey to

Gefores are very true.

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t Is not the Letter written by the Abbot de Mascranny, Uncle and Guardian to the said Lady, a formal Proof of the Falsity of all these Facts?

Says, that the faid Abbot de Mascramy, being insnared by the Discourse of the

ny, the Marquis de Gelvres must have retired to Gelvres, as well as his Wife. Did be do so? Twas not then, in order to practife that System, that Madame de Gelvres was confined to the Solitude of Gelvres.

<sup>\*</sup> We have shewed in our Remarks on the XXI. XXII, and XXIIId Articles of the Intercogatory of the Marquis de Gesvres, what were the true Motives of the Banishment or Imprisonment of Madame de Gesvres.

But the Truth of it is this; the Duke de Trefmes, foreseeing that the Severity he used towards Madame de Gesvies, would provoke her Relations and the Publick, thought he had best be before-hand with them, and insinuated such Impressions into the Abbot de Mascranny, as he believ'd would induce him to write the Letter, thinking he might afterwards find his Apology in that Letter.

faid Duke de Tresmes, might write whatever he wou'd have him.

#### MVXes, the fer forch

When she supposes in the 22d Article, that the Duke de Tresmes sent her Word by one of her Kindred, that is she would say she was contented with the Marquis de Gesures, and that he was really her Husband, she should not go to Gesures; is not this also a Supposition?

Says, that what she said in her twenty second Article is no Supposition, but that

it is true.

#### XIX.

\*Why does she not name that Person, as likewise the other whom she speaks of in the

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<sup>\*</sup> The Duke de Tresmes and the Marquis de Gelvies entrusted Mademoiselle de Gelvies with sham Secrets, and to that Purpose they make use of the Persons mention'd in the 22d and 23d Article of the Interrogatory of the Marquis de Gelvies. Now even sham Secrets are under a Promise of a Secresy, and it would be violating that Promise to name the Persons. Besides, People of any Distinction do not care to have their Names appear in an Assair of this Nature; 'tis therefore out of respect to them, that Madame de Gesvies declines naming them; and in this she has so much the more Reason for what she does, as the discovering their Names

Mademoiselle de MASCRANNY. 165 the 23d Article, to have sollicited her to write the same Acknowledgment in a Letter to the Duke de Tresmes, promising that if the would do so, the should return to Paris.

Says, that the Duke de Tresmes has so well described the two Persons mention'd in the Article, that it is unnecessary for her the Respondent to name them. Whether fac will appeal to the Perfors

#### of middle har XX. in nest over offer

\* If it be not true that the faid Marquis being arrived at Gefores on All Saints Day, flay'd there ten or twelve Days, and that they lay together all that time like Man and Wife?

Names would not decide concerning the Sufficiency or

Insufficiency of the Marquis de Gelvres.

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\* The Marquis de Gelvres always affects to equivocate in the Position of his Facta. For, what is the meaning of these Words, they lay together like Man and Wife? If we take them litterally, they mean the Marquis de Gelvres in quality of Husband, lay in the same Bed with Madame de Gesvres, and in that Sense the Fast is true. But at the same time, the Words are susceptible of another more secret Explication; which is, that Monsieur and Madame de Gesvres alted like Min and Wife, and in this last Sense the Fast u false. The Cunning then consists in turning the Fact in such a manner, that it may seem not to be denied without Perjury, nor confessed without subscribing to the Sufficiency. Do People make use of such Artifices when the Truth is on their Side?

Says,

Says, it is true that the faid Marquis de Gescres lay with her the Respondent all the time set down in the Article, but its salse that he either then, or any time since, consummated the Marriage, whatever Attempts he might make to do it.

#### XXI.

Whether she will appeal to the Persons who have seen the Marquis de Gesures in a State of persect Exection?

\* Says, that the Proposal is impertinent, and that she will appeal to none but the Searchers.

#### XXII.

† Whether she will believe the Servants and Landresses, who saw upon the Cloths

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<sup>\*</sup> Tu wonderful that the Marquis de Gelvres, who can do nothing before Searchers juridically appointed, can do what he will before Searchers of his own chuling.

<sup>†</sup> Avery fine Method truly for the Impotent! at that rate they may make use of another's Virility not unlike him, who set up for a Poet with the Verses be purchased.

Carmina Paulus emit; recitat sua Carmina Paulus: Namque potest, quod emit, dicere quisque suum.

Paul Verses buys; Paul is a Poet grown, For what be buys, a Man may call his own.

Mademoiselle de MASCRANNY. 167 and in the Shirts of the said Marquis de Gesures, the Tokens of the Conformation of their Marriage?

Says, no; and that the Proposal is as ridiculous as the preceding; since he never did consummate the Marriage, and for Proof of what she says, she demands to have the Person of her, the Respondent, visited.

### New Facts and Articles.

#### ARTICLE I.

Whether it be not true, that he again was came to Gesures on Christmas-Eve; that the said Lady wou'd needs that Day go to Midnight Mass; that the next Day she said she was ill; that under that Pretence the Marquis de Gesures was obliged to lie by himself in his own Apartment; and in particular, that that Illness was pretended; that, at length, on the third or sourth Night the said Marquis lay with her, and that after the Action of Marriage was consummated, she said to the Marquis, as it were by way of Reslection: If I shou'd prove with Child now, how it wou'd spoil my Projects!

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Says,

\* Says, it is true, that the faid Marquis de Gefores came to Gefores at the time fet down in the Article, and that he lay with her the Respondent a few Days after en ed sond : milesonn sales and whis

\* Tiseasy to see that this Fad is invented, but 'tis not quite so easy to see what made Monsieur de Gesvres rack his Brains to invent it.

In the Pleadings he was reproach'd for the studied Dryness of his Answer; he was even told that he talk'd of his Performances like a Parrot; I have confummated, I have confummated, and nothing elfe. This Observation, as plain as it was, did however strike those who have Experience in conjugal Life, and who know that the Practick of Marriage is feafoned with a great many Adventures, which signalize certain Operations, and which serve instead of a local Memorandum to all Husbands. As therefore, the Marquis de Gelvres had none of these local Memorandums to quote, he well perceiv'd that that would render his pretended Confummations very doubtful. What did he do then, to remove his Doubt? he has so haraffed, so racked his Imagination, that at length it has brought forth the miferable Tale it here relates, flattering himself, that when he has tacked this Story to one of his Nocturnal Exploits, be will be no longer faid to talk of them like a Parrot. This is the true Source of that Fable? The Proof of what I say, is twofold: for besides that the very Nature of the Table discovers from whence it proceeds, and shews that it is the Fruit of a Piece of Violence done to the Imagination, Monsieur de Gesvies may be likewise asked, how he came to forget that incredible Intemperance of Tongue, which be attributes to Madame de Gesvres, when he answered the twenty eighth Fast, which Madame de Gelvres caused to be exhibited to him. That Article is concerning what paffed

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his Arrival, but not having confummated the Action of Marriage that! Night any more than before, the faid no fuch thing, that if she shou'd be with Child, it would fpoil her Projects. A

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What were the Projects she was afraid to Says, the has answered this Article by

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The present Interrogatory and Answers being read, the perfifts in her Answers, and has figned, or a synd or report neitherid

BEGON, Counsellor. to gridsod ered BERNARD, Attorney. ... luch as own them elves not absolutely and

incurably frieid and impotent (for indeed at Gelvres betweenher and him in the Christmas Hos lidays .: Here was an Opportunity to revice this pretended Adventure. How came he then to forget it? Was not the Pact of Weight enough to make an Impression upon his Memory! That was not the Reason; bur be had not when been told how much the History of the Nuptial Bed loses of Probability when it is fo bald let ut say then, id expedivit psittaco suum xaies. And let us from thence conclude, that fince the Marquis de Gelvres is obliged to rumage his Ideas (and ideas too follille natural ) for wherewithat to give an Appearance of Propositive of bis Confammations Prists Proof that those Consummations have no morer of Truch. in them than his Ideas have of Probability.

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MEMORIAL, concerning triennial Co-babitation, relating to the Question of Impotency, depending between the Marquis de GESVRES, and bis Lady.

MI Ithout tracing back the Civil Laws, from whence the triennial Co-habitation feems to have been borrowed, it is certain that the Constitution Landabilem is in a very different Case from that before us. Pope Celestin III. is there speaking of fuch as own themselves not absolutely and incurably frigid and impotent (for indeed to put such to a Trial of three Years, were a Prophanation, and a Piece of Sacrilege) but who confess that their Complection is feeble, flow, and hard to be stirr'd, or who impute their Imporence to some transitory Accident; and who fay in a Word, If I have not consummated, I will consummate; give me but time.

The Pope judges in these Circumstances, that the utmost rime fit to be granted 'em, is three Years: But it does not follow from thence, that the Probation ought always

# Mademotselle de MASCRANNY. 171 to last three Years: For besides that the triennial Probation does not take place but where Frigidity cannot without that long

triennial Probation does not take place but where Frigidity cannot without that long. Essay be manifested, si frigiditus prins probari non possit, I say, besides this particular Cafe, nominally excepted by Chapter Laudabilem, it is certain that in those Parts of the World where the Triennium is practis'd, as at Rome, the Judge may according to Circumstances shorten the Delay of three Years, and content himself with a Proof of less Duration. And this is the difference which all the Canonists and Practitioners of the Ecclesiastical Court make between Frigidity and Sorcery, in frigido, say they, non semper expectatur triennium, in maleficiato Cemper tout of the success our con in

In impedimento maleficii semper debent conjuges per triennium simul habitare, quod cum hoc impedimentum sit temporale, per tempus potest re-

moveri. Panorm. in cap. 1. de Frig.

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Nec video quare naturaliter frigido, habenti pubertatem plenam, triennium integrum concedendum. Host. in cap. ult. de Frig. in verbo, Cognoscendi alias. Idem in verbo Triennium. Nec puto quod sudici liceat abbreviare triennium, subaudi, quando agitur de malesicio, licet aliud sit in frigiditate. Nam in frigido non semper expectatur triennium, in malesiciato semper. Rota Decis. 54.

<sup>\*</sup> In frigido non semper expectatur triennium, sed in malesiciato semper; magis enim sperandum est, quod cesset impedimentum accidentale, quam illud quod est à natura. Hostiensis in c. laudabilem, in verbo, per triennium.

Why does not Fridigity always require an Effay of three Years? Because common Sense tells us, because Experience teaches us, that a Man, who without being fick! without being confumprive, cannot in a Month or Two exercise conjugal Veneral is a Man who is unterly unlikely ever to do. ic. It is impossible but Nature must Geep a Sleep of Death, when the Presence of an Object, reiterated daily for some Months together, was not able to awake her. All Men, whether able or unable, can attest this Truth, the one by what they feel, the others by what they do not feel. The Canons two concur in it, as appears from those Words of Chapter Accepifi de Frig. cità enim & in parvo tempore scire potuit si cum ea coire potuisses. And as in such case Impotency is a Vice of Nature, which cannot be repair'd, but by the Omnipotence of the Creator, it ought to be judg'd remediless; for the Canons look upon Impotency as desperate, when its Cure requires a Miracle. crus pous shair na this Timping 199 292

It is not so with Sorcery; that is never but an Accident, which may indeed be perpetual; but is never presum d to be so, but when it holds above three Years; \* so

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<sup>\*</sup> Et dicitur maleficium perpetuum, quod intra triennium per exercismos & orationes uon cessas:

Innoc.

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that in order to know whether it be perper tual or temporary, the Nature of it must be explor'd by a Proof of three intire Years. And then, fay the Canoniffs, tempus est de solemnitate probatorià. This Doctrine is grounded upon Chapter Littera de Frig. which speaks of a Husband under Incantation, as is manifest from two Tokens; the First because the Husband was imporent only in respect to his own Wife, tho' she was aptly organiz'd, for by that Character Soreery distinguishes it felf; the Second, because the Ecclesiastical Judge had inflicted Penance upon the Husband and Wife, which is never done but in Cases of Sorcery. \* Thus the true Use of triennial Co-habitation is where there's Suspicion of Witchcraft, Fascination, tying up

Innoc, in cap. ult. de Frig. This Innoc. was afterwards Pope Innocent IV. Maleficium, per triennium præsumitur perpetuum. Decif. 54. Rota imer eas qua

addita funt ad Calcem novi Zacchia.

\* Hoftiensis upon the last Chapter de Frig, in verbo ut agerent pænitentiam, says, Per hoc satis evidenter apparet, quod hæc decretalis potius fit intelligenda in maleficiato, quam in naturaliter frigido, quia facilius solveretur per pænitentiam maleficium, quam impedimentum naturale; nec invenio expref-fum, quod ad folvendum impedimentum naturale indicatur pænitentia.

Anacharanus Says the Same on this last Chapter, No. 10. and Innocentius, ibid. fays, Per hæc convincitur, quod hæc Decretalis loquatur in maleficiato.

of the Cod-piece, or some other impediment apt to vanish away with time. Now, as the Parliaments are not over credulous to magical Operations, this Case rarely comes in use; and this Reason joyn'd to that which will be spoken of by and by, is probably the Cause why we find among us so sew Footsteps of triennial Co-habitation.

To these Observations we must add two others; the First, that according to the Text of the Decretal Laudabilem, the Wife is not oblig'd to prove after three Years, the Insufficiency, or rather Failure of Confummation by any other Proof than that which the Canons and Capitularies of Charlemagne calls rectum, or verum, or justum judicium; that is to fay, by her own Oath, and that of her near Relations, who are to iwear non de scientia sed de credulitate. they are not oblig'd to affirm, that there has been no Confummation, because such a Negative cannot fall within their cognizance: They are only to swear that they believe in their Conscience, that tho' the two Spouses did buckle to, in order to consummate their Marriage, yet they were not able to accomplish it. This Oath was call'd Justum Judicium, for two Reasons; Justum, because it was taken upon the Holy Evangelists, with great Solemnity; Judicium, because that Kind of Proof was,

Mademoiselle de MASCRANNY. 175 as is seen per Tit. de Purg. Canon, the most frequent of those us'd in Judgment, when they had to do with an occult Fact. Therefore, according to the Chapter Laudabilem, all the Proof of Impotency after three Years, was founded upon the Faith and Religion of the Wife, as well as upon the Faith and Religion of her near Relations. Thus the Wife was not reduc'd to prove her Virginity, not because Virginity was judg'd investigable, if I may use that Term, but because they well knew that the impotent Husband, either by other Persons quarter'd upon her, or by means of Organs destin'd for another use, might have put his Wife in the Condition of those who do not pretend to be Virgins.

The Second Observation, is, that this antient Practice prescrib'd by the Decretal, is no longer in force. For in the Places, and in the Cases where the Triennium is observ'd, they no longer content themselves, after three Years, with the Oath of the Wise, or that of her Kindred, but proceed to examine whether her Virginity has escap'd the matrimonial Co-habitation. But because it wou'd be difficult for Virginity to avoid the Snares which an impotent Husband might lay for it by means of a foreign Corrupter, they guard it against that danger, by sequestring her Person, in a Friend's House, the Doors whereof are

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Night; \* a Precaution which John Andreas, Hostiensis, Ancharanus, and the other Canonists, have borrow'd from Chapter cum Locum, de Spons. and which the Rota never fails to observe: But such a Precaution as only serves against the Attempts of Strangers, and which is still a very ineffectual Preservative against the Irruption of the unnatural Organs of the Husband.

All these Truths being pre suppos'd, as so many Foundations, I say, in the first Place, that the Impotence which the Mar-

Ancharanus in d. Capitulum ultimum.

Pone ergo, quod vir qui forte divitias mulieris diligit, procurat ut ab aliquo corrumpatur occulte, ut he non separetur, nam muliæ sunt malitiæ hominibus ad malum, dicit Joannes Andreas; recurrendum esse ad consilium cap. Cum Locum de Sponsal. And indeed 'iis plain from the 14th Decision of the Rota above quoted, that whenever the Rota t'inks sit to grant some time to the Husband to prove himself, it always provides, as far as may be, for the Security of the Wife, when she says she's a Virgin.

<sup>\*</sup> Sed quid si vir suspectus habeatur, quòd faciat corrumpi mulierem propter magnam dotem, quam habet mulier, serva consilium Capituli, cum Locum de Spons. Host. in Cap. ult. de Frig. Idem, upon the Word Puellam of the Chapter cum Locum. Ea puella timet dessorari, si in potestate viri remaneat, unde non potest ei provideri, nisi sequestratio siat. Idem, upon the Chapter Causam de Probat. sed quare non restituitur viro, quia cum dicat se virginem, timetur de dessoratione, & ideò debet poni in loco tuto: & nota quòd de loco tuto semper est per judicem providendum.

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quis de Gesoires is arraign d of, is not of the
Number of those which according to the Canons require the Probation of the Triennium.

I say in the second Place, that the the Parties were in the Case where triennial Co-habitation is order'd at Rome and other Countries, it were Argument enough against ordering it here, that it is not the Gustom of France.

I say, in the third Place, that the Reafons which have banish'd that Proof from among us, are in sact unsurmountable, and plainly shew how impracticable the Essay of three Years is, especially when the principal Proof of the Wife, consists in her Virginity.

To confirm my first Proposition, I need only ask the Marquis de Gesores, whether he talks like those Husbands for whom the Decretal Laudabilem was made? Does he say, like 'em, If I have not consummated, I will consummate? Does he charge his Impotency to any transitory Accident, to any Malady, to any Sickliness of Constitution, which time may remedy? Nothing like it: He maintains that he has confummated; he goes further, he makes Elogiums upon his Constitution; and will have us acquiesce in that excellent Habit of Body, which he has so loudly trumpeted in this Court. Now what else can be infer'd from this, but that his Impotency not being either the Effect of a Malady, or an Acci-

Accident, or Sickliness of Constitution, it cannot possibly be ascrib'd to any thing but a Vice of Nature, irreparable by any

but the Author of Nature?

Were we in a Country, where Incantations and Witchcrafts were common, a Doubt perhaps might be made concerning the Cause of the Impotence; but in France People are not superstitious as to magical Operations; and do not without strong Reasons presume upon Sorcery: Nor does the Character of the Marquis's Impotency fall in with that Idea. He might indeed be presum'd to be under an Incantation, if by his Operations he had, like other Lords of his Age, acquir'd a Reputation with the fair Sex, and met with no Impediment but at home in lawful Endearments. But there's no more than one Voice with refpect to him; lawful or unlawful, he's alike interdicted. Now 'tis by this Mark, natural Frigidity is diftinguish'd from Sorcery, frigidus uni, say the Canonists, frigidus est omnibus.

That may be, fay fome; but the Marquis de Gesures is so young, that 'tis not time to despair as yet. Who knows but there may be in him some hidden Principle, which is ripening, and only wants a cer-

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tain Age to open into Blossom?

To those who talk thus, I answer, first, That if People were allow'd to argue by M y-be's, which may never be, there wou'd

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wou'd no longer be any certain Principle, because there's nothing but what may be seign'd with a May-be, or a Who-knows-but: But the way to put a check to the License of such Fictions, is to stick to the ordinary Course of Nature. And because Hostiensis and the Canonists have upon that Head settled certain Principles, it is sitting to deduce em, and at the same time to take notice of the Foundations of them. They are these.

If the two Chapters Accepisti and Laudabilem alluded to one and the same Class of Impotency, it were impossible to reconcile them, because according to one the Wife is to fue in fix Months after Marriage; whereas according to the other she ought to flay three Years. And the Difficulty will not be eluded, by rejecting the Authority of the first of those Texts, under pretence that it is taken ex Brocardico, an unknown Piece. For be it borrow'd from whatever Author, it is equally true that Gregory IX. gave it a place in his Compilation of the Decretals; which he cou'd do for no other End but to impart to it the Authority and Sanction of a Law. So if it is not a Law by Nature, 'tis one by Adoption, and that's as well.

How then, says Hostiensis, are we to account for the seeming Contrariety of this and the Chapter Landabilem? There is but

one way of doing it; and 'tis this. The Chapter Accepisti must be suppos'd to speak of Men fully form'd \*, that is to fay, fuchas have attained to full Puberty and turn'd. of Eighteen. For tis well known, the Civil Laws have fix'd perfect Puberty to. that Age, as the ultimate Period, after which Nature makes no new Prefents to Man ; and therefore well does this Chapter fay, there's no need of a very long Space to make Proof of a Husband, cito: enim & in parvo tempore scire potuit, fi cum ed coire potuisses. Why, in parva tempore? Because the Husband had exceeded the Age fix'd for complete Puberty, and in such case, a Night or two was enough to make a Trial of, bac prima nocte sciri potest.

As for the Chapter Laudabilem, continues Hostiensis, it speaks only of such as are yer under the Age of Eighteen, and it decides that they ought to have three Years. allow'd 'em, (if there's room for so much. Space ) in order to gain full Puberty; in a Word, a Husband, says that great Canonift, ought to be allow'd as many Years as

wed a to neither burginod a Lew. \* Conjuges gaudebant plenissima pubertate, ided autem hic dicit per unum aut duos menses, aut annum, quia si masculus sit sexdecim, aut decem & feptem annorum; semper funt expectandi, quousq; plena pubertas completa fit, & postea tempus est: arbitrarium. Hoft, in cap. 1. de Erig.

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he wants of being Eighteen: Three Years, if he's in his Fifteenth; two, if in his Sixteenth; and one, if he's in his Seventeenth; and after he has reach'd Eighteen, the Rule is to give him for further Proof a Month or two, or some other Space at Discretion, after which he's to be adjudg'd impotent, if he cannot acquit himself of his Duty \*.

It is clear, this Reasoning of Hostiensis, follow'd therein by the Bulk of the Canonists, supposes for a Foundation that the Age of Eighteen is the critical Age, the ne plus ultra of Hopes; in short, the Age that decides the Ability or Inability of Man; so that to build after that Age any Hopes upon what's to come, is to build Castles in the Air. And this because the Laws have determined, that sull Puberty is acquir'd at Eighteen.

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<sup>\*</sup> Quod frigiditas statim probari non potest, puta quia vir habet tantum semiplenam pubertatem, id est, quatuordecim annos aut quindecim, in qua atate consuevit masculus contrahere communiter, & sic oportet expectare quousq; habeat plenam pubertatem, ergo si sit quindecim annorum, expectabitur per triennium; si sexdecim, per biennium; si decem & septem, per annum; si decem & octo, per mensem, per duos, vel arbitrarie. Host, in cap. Laudabilem, in verbo, Frigiditas, idem in cap. Puberes de Despons. Impub Ancharanus teaches the same Dostrine on cap. 1. & ult. de Frig.

Now taking this Principle for granted, what can we expect from the Marquis de Gefores? He was full Eighteen Years of Age in Sept. 1710. from that time to May, 1712. (when Madam de Gefores quitted his Company) is an Interval of Eighteen Months. So here's Eighteen Months Co-habitation, posterior to full Puberty: If therefore in those Eighteen Months he cou'd not confummate his Marriage, tho' he was beyond his full Puberty, it is clear, according to the Doctrine of Hoftienfis, that he never will confummate; which being so, his Age cannot serve for a Pretext for triennial Co habitation.

But if the Partisans of the Marquis de Gefores don't like this System, let us follow the common System, and suppose every Man capable of accomplishing his Marriage at the Age of Fourteen. The Marquis de Gesures, who was near upon Seventeen when he marry'd, cou'd therefore have consummated the very first Day. And yet he has liv'd two Years and nine Months with Madam de Gefores, without being able to do it; he must therefore be concluded incapable of Consummation, and the more so, because he's of an Age wherein Capacity is not us'd to conceal it felf, if Nature has bestow'd it.

I think I have prov'd my first Proposition; the Impotence of the Marquis de WOVE

Gesvres

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Gesures is not of the Kind of those which require the Triennium, ev'n according to the Principles of the Ultramontani, and his Age wou'd be rather a Reason to resuse him than grant him a three Years Co-habitation. We shall now proceed to the Second, and shew that the Triennium not being Customary with us, it wou'd be against the Rules to recur to it in this Cause.

We don't presently find by any precedent, that the triennial Co-habitation has been order'd, or if it has, the Decrees have set'em aside. This is the Reason why our French Practitioners keep a perfect silence upon this Head; this too is what has oblig'd 'em to borrow from beyond the Mountains the Rules above cited.

'Tis true, two Authors of the last Age, Tagareau and Hotman, did attempt to introduce this Practice amongst us. But as for the latter, 'twas known he had his Reafons for espousing that Course, and there's room to judge from the Writings of the first, that he defended the Cause of Debray (a declar'd Impotent) because of his miscarrying in the Tryal of the Congress. For these Reasons therefore it chiefly was, that those two Authors had a Grudge to the Congress, and their Intention was to bring in its room, the triennial Co-habitation as an Essay more commodious for the

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writings which they published to preach up the Triennium, discover plainly that the Practice of it was unknown, as it still is.

Perhaps 'twill be said in answer to this, the Trial by Congress being more expeditious and more satisfactory than that of the Triennium, there's no wonder it superseded the other; but that the Congress being banish'd, the Triennium ought to take its

place.

To this I answer, that the Congress prov'd at most an Impotency but of one or two Hours, and supposing that from this momentaneous Impotency, cou'd be concluded an Impotency for the time past, at least they cou'd not infer from thence an Impotency of above one Year, if the Marriage had been but one Year; or two, if it had been two; but there remain'd either a fecond and third Year, or only a third, during which the Husband was to have effay'd, and yet this Remainder was refus'd him, because they judg'd that one that had been insufficient during a Year, was so for his whole Life; from whence 'tis easy to conclude, that they were not of Opinion the Probation shou'd extend to three Years. To make this plainer, 'tis certain that when a Husband was put to the Congress in the first or second Year of his

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his Marriage, he found himself disappointed of part of the time destin'd for the continuance of his Probation; and if he did not approve himself in six Months, nay two Months, he was separated from his Wife. For what reason this? only because the Term of three Years was always deem'd too long, and that they judg'd according to Chapter Accepisti, and the Sentiment of Hostiensis, that with respect to a full form'd Man who has exceeded his stated Puberty, a Probation of some few Weeks was sufficient, cità enim & in parvo tempore scire

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This Truth is illustrated by the Decrees. cited in the Marginal Note of Cophin: Book 2. Tit. 7. n. 22. In the first Cafe, a Husband had liv'd but two Years with his Wife; and in the second, but fourteen Months: One of 'em had fail'd in the Congress, the other wou'd needs have the triennial Co-habitation substituted instead of the Congress, and both claim'd the Triennium, as a Period of Time fet by the Canons for the discovery of Impotency; but neither of 'em was regarded, and their Mouths were stop'd by a short Word out of Chapter, Laudabilem, si frigiditas prius probari non possit. The Canons, they were told, do not exact from the Wife a Forbearance of three Years, but when such Forbearance is necessary to ascertain the

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Impotency; but for your part, faid the Court to one of 'em, you are already prov'd impotent, by miscarrying in the Congress; and as for your Impotency, said they to the other, that shall be presently prov'd by the Congress. To what purpose then shou'd we expose to the Horrors of a three Years Co-habitation, these Wives who complain

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of your Frigidity?

Here I make a Reflection, and fay, this Answer, tho' a just one, wou'd not have fatisfy'd the Objection, had the Term of three Years been a necessary Term. For in short, what cou'd be prov'd from the Congress, preceded, as it was, by an Inspection of the Wife? What, I say, cou'd it prove, but that during the two Years, or the fourteen Months of the preceding Co-habitation, those Husbands had languish'd in Frigidity and Imporency? But cou'd not the one have got rid of his Languidness in the Year that remain'd? And the other in the two and twenty Months? We may therefore truly fay, that it was never held as a Maxim in France any more than at Rome, that the Proof was no Proof till after three Years, and by necessary Consequence the Triennium was never practis'd there.

From this general Principle I descend to Particulars, and do fay, that the Marquis de Gesores having liv'd with his Wife two Years

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Years and nine Months, he wants but three Months to complete the three Years. For to think to deduct for the Time spent in the Campaigns and Absences, is a Jest; for if this reckoning of Absences were to take place, the three Years wou'd never be out; for the Husband need do no more than absent himself, and so spin out the three Years to his Life's end. Therefore is a Maxim among all the Doctors, that the Co-habitation of three Years ought to be understood a Moral Continuity, and fuch as is commonly practis'd between Manand Wife, who are fometimes separated from each other by the Necessity of Affairs. Hos Triennium, fays Sanchez, non debet effe. mathematice continuum, sed intelligitur civili modo.

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I say then, that foralmuch as the Marquis de Gesures has dwelt with his Wife for three Years, fave three Months, all that may be granted him, amounts but to the three Months which are wanting to fill up the three Years. But neither may that be done, without an excessive Nicety which wou'd be next kin to Superstition. For it were to suppose that a Husband can't be judg'd impotent, unless he went thro' a Trial for three whole Years; and we have just now made appear that that Principle is absolutely false, contrary to Experience, contrary ev'n to the Canons, which require but

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but a very little time to evince Impotency, cito enim & in parvo tempore, &c. contrary likewife to the Jurisprudence of Decrees, and ever to the Jurisprudence of the Rota, where 'tis a Maxim, that in frigrido semper expectatur triennium, and that in frigido judex

porest abbreviare tempus triennii.

I refume after this the Argument which was us'd to thefe two Husbands, who by the Decrees I just now cited, were frustrated of a good part of that Triennium which they claim'd. They were answer'd thus, You in vain demand the Triennium, because the Triennium is never granted but when Frigidity cannot be manifested without the Probation of three Years; but your Frigidity is already manifested, or may be manifested by the Congress. In like manner fay I, 'tis unnecessary to allow the Marquis de Gesores the three Months that remain to complete the three Years, fince his Frigidity may at once be manifested by the Visitation which Madam de Gesvres demands.

That the Visitation can render the Virginity certain, is what has been prov'd by the Replication; so all that remains to be examin'd, is whether a Virginity which has preferv'd it felf during a conjugal Cohabitation of two Years and nine Months, is not an Argument of a Husband's Impotency, at least as convincing as the Congress Mademoiselle de MASCRANNY. 189

grefs was heretofore w Foreif it has the fame Force, it is evident, that as formerly the Congress render'd the Triennium improper a tie at this time the fame thing with the Visitation of the Wife. Now it is not possible to doubt, that after follong a Co-habitation, Virginity is as strong, nay aftronger Proof than the Congress; therefore the Triennium is not less improper congressor ai doord landamahand od and

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That Virginity is a stronger Proof than the Congress, is what cannot be question'd. The Congress cannot of it self prove an Impotency of above one or two Hours but Virginity proves an Impotency for the whole time of Marriage: By the Congress, they cou'd be fure of only a momentaneous, Impotency, but by Virginity we are fure of a successive and continu'd Impotency; and for that reason the Congress was ald; ways preceded by an Inspection of the Wife, without which it cou'd afford nothing but an absolutely false and deceivables Proof. In a Word, it borrow'd its whole Force from Virginity, and it was in then Virginity that the fundamental Proof rezs filed, because that was the very thing that a hew'd the Husband's Imporency to be hard binal. As for the Congress, it was onlyw an accessory, and properly speaking, a imple Adminiculum of that Proof, because all

all it demonstrated was, that the Impotency was actual in the Moment of Congress. Thus the Habit being once provid, the Act hardly proves any thing at all; and therefore it was with reason said, that the Congress was only an adminicular Proof of Impotency, whilst the principal Proof was that which resulted from the Wife's Virginity. The Wisdom of the Decrees has taken away this Prop, this Adminiculum; but the fundamental Proof is left. And with us that Proof which always was the capital Proof, ought without a Prop to have the same Effect it us'd to have when

its Prop cou'd be joyn'd to it.

I say therefore to those who are for reviving the Triennium, that their Pretention carries with it a manifest Irregularity, and that while they think they're executing the Canons of the Church, they wou'd violate them; fince those Canons do not permit the Triensium, but when Impotency cannot be founded but by that Plummen. Which cannot be faid in our Cafe, fince Madam de Gefores's Virginiey holds forth to us a far more certain and infallible Touch-frome. And as for faying, that before Virginity can be a Touch-stone of Imporency, it must have stood a Siege of three Years, is a Principle whose Falsity has been already demonstrated, nor only from Reason, from Experience, and from the Canons, but also from

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To this I must add what has been said in the Replication, to thew that Virginity has ever been look'd upon as the strongest and most invincible Proof of Impotency that a Wife can possibly produce. Nor ought I to omit to back it by this Saying of Innocent IV. upon the Chapter Proposuifti. Hac probatione, says he, que fit per aspectum virginitatis, non est melior probatio secundum Ganones: I may also joyn thereto the Authorities cited by Sanchez in Disputation 109. Tu. 7. where he shews, that Impotency is prov'd per rectum judicium, that is, canonically, when on the one fide the Husband is suspected of Impotency, quando apparent dubia figna frigiditatis viri; and on the other the Wife is found to be a Virgin, & see reperitur virgo.

In our Case, the Marquis de Gefores is recogniz'd a suspected Impotent, by reason of the Searchers finding him without any Signs of Motion; Madam de Gefores on her part offers to prove her self a Virgin; therefore if this Virginity is once prov'd, the Impotency is ascertain'd, according to the Principle of Sanchez, and if it be alcertain'd, to what purpose is a longer Trial? Frigiditas prius prolari potest, ergo non debet

expectari tempus triennii.

The

The Reafons which I have being deout from among us the Practice of triennial Co habitation. I fay partly, because others of their will be found in the fettling of the third Proposition; and whether that be so or no, this Argument enough for its rejection, that Custom has lejected it. For in these Matters tis a dangerous thing to depart from Cuftom, which is what is call do Experientia, rerum Magiftra. And in this Spirit did the Parliament act in its Decrees. Before the Abolition of the Congress, all the Husbands who were arraighd of Im-potency us d loudly to declame against that monitrous Kind of Effay, "equally accusing it of Turpitude and Uncertainty! Alidate has appeard fince, that they had Reason on their fide. And yet Custom, stronger than all these Declamations, stronger evin than Reason's self, if I may so fay, forcid the Parliament to declare tregular the Proofs which the Officials whempred to Substitute in the place of the Congress. Why to ? Because in fuell nice Points, People ought to be jealous of Custom. And this by the bye ferves for another Answer to that Torrent of Eloquence which the Marquis de Gestres has fet fly against inspecting his Wife! Tis a disagreeable, a mortifying Custom, I own; but it is a Custom, and which is worse, a necessary Cuftom.

Mademoifelle de MASCRANNY. 192 Custom. All that the Marquis de Gefones can oppose to it is not stronger than what was faid against the Congress. Nay, 'tie plain, there's no Comparison between the Objections heretofore made against the Congress, and those now made against fearching the Wife. If therefore the former were fet afide while the Practice of the Congress subfifted, ought the latter to expect a better Fate now, when the Practice of judging the Husband from the State of the Wife, is a Practice so frequent, fo notorious, and authoriz'd by so many Examples? Again, if it was an Abuse to substitute the triennial Co-habitation in the flead of the Congress, when the Congress was in use, tho' that Usage was not authoriz'd by the Laws of the Church; wou'd it not be a much greater Abuse, to subfitute that Co-habitation in the stead of the Inspection of the Wife, which is a kind of Proof not only in use, but approv'd of, and confirm'd by the Canons? a notifed

However, that there may be nothing lest unanswer'd, we must confess, there is one (and but one) Precedent of triennial Co-habitation, and that is in the Year 1675. in this Court. But in that Case, all the three Circumstances for which the Triennium seems to be invented, did concur, viz.

1. A very incomplete Impotency, and such as afforded Hopes of being cur'd in

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time. 2. An Impotency which favour'd of Witchcraft, because it carry'd with it the Tokens of those conjugal Diffensions which may be diffipated by Co-habitation: And laftly, A Maidenhead loft, either by the Approaches, or the criminal Practices of the Husband. When these three Singularities meet, triennial Co-habitation may be an innocent Remedy; a Remedy, in that it may restore the Ability of the Husband, and therewith the Union of both him and his Wife; Innocent, in that the Wife who has loft the Evidences of her Virginity, runs no risk in falling again into her Husband's Hands, fince the Husband cannot possibly take from her a thing which cannot be twice loft. But bating this Example, which is fingle, and has its peculiar Reasons, it does not appear that the triennial Co-habitation, which in effeet is only a Congress of three Years, has been made use of, no, not fince the Abolition of the Congress. And therefore M. Gerbais, who wrote his Treatife of the Church's Power above 20 Years after the Decree that banish'd the Congress, was in the right to say, pag. 442. that the Triennium is not us'd in France.

But if what we have been faying, proves that it is not us'd, it will appear from what we are going to add, that it may not

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And this brings us to the third Propofition, namely, that the triennial Co-ha-

bitation is impracticable.

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The Disorders and Impurities which unavoidably follow from a Wife's co-habiting with an insufficient Mate, ought doubtless with the Ministers of the spotless Lamb, to be Reasons of great Force and Weight, for rescuing a Wife from a Condition either so perillous, or so satal; but because I'm not unsensible that this Consideration is more cogent in the Tribunal of Confession, than in the exterior Jurisdiction of the Church, I shall content my self with making the Observation, being likewise sully perswaded that the Love of Purity will dictate more to our Judges, than all Mankind together cou'd do. Therefore I pass on to other Ressections.

And I say, that if triennial Co-habitation be practised, in the manner Tagareau and Hotman have traced out to us, and which in effect is the same which is taught by the Canonists, it is impossible but it will stifle the Proof of Impotency, instead of assisting it. They require that when the three Years are passed, the Wife is she continues to complain of Impotency, shall be obliged to make good her Complaint by proving her self a Maid. Which is the same thing as demanding her to produce a Jewel she's no longer Possessor. This

is easily conceiv'd by any body who knows what Rage, Policy, Punctilio, Interest, and sometimes Dread of the utmost Misery, may put an impotent Husband upon doing, when that same Virginity which is to convict him of Insufficiency lies at his Mercy: This is yet more easy to conceive to any body who knows how brittle a thing a Maidenhead is, and how tenderly it ought to be handled; in short, to any body who knows how impossible it is, when once 'tis perish'd, to find out whether it dy'd a natural Death, or a violent one. This Danger is so great, and at the same time so inevitable, that hardly any thing but a Miracle can save a Wife from it; and I can't enough wonder how those forecited Authors and Canonifts con'd fuppose that such a Miracle shou'd offer every Day.

What's most amazing is, whilst they leave the Wise expos'd to the Enterprizes which the Husband may execute without an Accomplice, they take mighty Precautions to guard against those Enterprizes which require the Concourse of another. They're asraid, as is before shewn, lest the Husband shou'd suborn a Corrupter, and quarter a Stranger upon her in order to bring an Eclipse upon her Virginity; and therefore they have thought of sequestring the Wise in some third House, according

Mademoiselle de MASCRANNY. 197 to the Remedy taught (tho' for another

Case) by Chapter cum Locum. \* But this Expedient which may be useful against Dangers from without, is of no Service against those from within. Yet these last are what's most to be dreaded, and which unfortunately are unprovided of a Preservative; for 'tis impossible for human Wit

to think of any.

Again, it is certain that the greater the Wife's Fortune is, the more 'tis to be fear'd the Husband will leave nothing unattempted to extinguish that unexceptionable Witness of his Impotency, which the Wife carries about her; that Witness, I fay, which alone depofes against him:

<sup>\*</sup> When the Rota thinks it fitting to allow a Husband who is arraign'd of Frigidity, some time of Cohabitation, which it prudentially regulates, (for it feldom extends that time to three Years) it takes as imaginable Precautions, to secure the Wife's Virginity against the Enormities of the Husband. This is what is manifest from these Words of the 14th Decision. Reservarunt Domini de Rota videre qualis esse debeat ac quantus hujusmodi terminus, cum pluribus in casibus Doctores illum arbitrio judicis relinquant-Præterea decernendus etiam erit modus & locus hujusmodi co-habitationis, ac ratio incunda copulæ per quam fit puellæ cautum, nè a viri fævitià detrimentum patiatur. It were to be wish'd, we cou'd know how it fortify'd the Wife against the Danger ber Maidenhead runs, on the part of the Organs which are obedient to the Husband.

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This is an Observation of Hostiensis and Ancharanus. Quod si vir, says the former, suspectus babeatur quod corrumpi faciat mulierem propter magnam dotem quam habet, & c. Pone, says the second, quòd vir qui forte divitias mulieris diliget, procurat ut corrumpatur. Thus the Danger increases proportionably to the Wise's Estate, and this is natural; the richer the Wise is, the more violent is the Temptation for the Husband, and the more terrible the Danger for the Wise.

If the Chapter Laudabilem was practis'd in the Terms 'tis drawn up in, and if the Wife cou'd after the three Years prove Default of Consummation by her Oath, and the Oath of feven of her near Kindred, she wou'd not indeed run quite so great a Risk. But the modern Principles require that the Virginity shall not undergo Cohabitation, and that the Wife shall be believ'd from a Report of Matrons. Now to impose triennial Co-habitation upon a Wife, is the same thing as obliging her to produce Evidences which the Enemy may every Moment Day and Night tear in pieces with the greatest Facility. 'Tis properly giving her up to his Mercy. 'Tis prejudging the Cause in Favour of the Husband.

I say therefore in these Circumstances, that if the Probation of three Years be one of those Iron Rules, which never bend either to Necessity, or the Judge's Pru-

dence,

dence, Madam de Gesures wou'd be ruin'd not by the Judge but by the Law. But triennial Co-habitation is so far from being an inflexible Law, it is certain that in the very Places where this Law is most respected, it is always subjected to the different Considerations that arise in the Judge's Breast. In short 'tis arbitrary, and all of it that is not arbitrary is, that it is never to take place but in the utmost Extremity, si frigiditas prius probari non possit.

If this be fo. did there ever offer an Occasion attended with stronger Considerations for fetting afide all Thoughts of Cohabitation, than this Case of ours? Are not two Years and nine Months enough to judge of the Marquis de Gefores's Impotency in? Gan it be expected he will do that in three Months which he cou'd not do in almost three Years? Can it be believ'd that at twenty Years of Age, he will be another Person from what he was at eighteen or ninerock? Is he not already half convicted of Impotency by the Searchers Report, and yet more by his backwardness to wipe away the Presumptions rais'd against him by that Report? Will not that Demi-conviction become complete by the Proof of Virginity which with certainty will verify an habitual and fuccessive Impotency, from his first marrying by the Parliaments, and wif emit sint to

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I'll be bold to fay, that it wou'd be ruining Madam de Geferes for nothing at all, and purely for Ruin fake, to reconcile her to the Marquis de Gefeires, I don't fay for three or for one Month, but a fingle Day; for it wou'd be admitting a temporary Expedient which might indirectly and very eafily be turn'd into a perpetual and definitive Adjudication, and I fee but one way to hinder it, namely, to make it part of the Sentence, that after the time of the Co-habitation is expir'd, Madam de Geswres shall be credited concerning Default of Consummation, upon her Oath, and that of seven of her near Relations, according to the Form prescrib'd by the holy Decretals. Were this Expedient authoriz'd by Custom as 'tis by the Canons, it wou'd really put an end to the greatest Inconvenience of Co-habitation, because then the Proof of Impotency would no longer depend upon the Proof of Virginity, but upon the Oath. Now Gentlemen are to confider whether this last Proof being no longer in use for all its Canonicalness, ic can be prefer'd to a customary Proof, which is at the same time canonical, namely, the Search after Virginity in the Wife's Person. They are likewise to confider whether this Medium, which People are unacquinted with, is like to be relish'd by the Parliaments, and whether the Impotency

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potency of the Husband will become more evident from the Oath than from the In-

spection of the Wife.

I faid that the Expedient which I propose puts an end to the greatest Inconvenience; for it does not to all. Where will you presently find that House of Sequestration which will readily take up with the Probations of the Marquis de Gesures, and subject it felf to receive him at all Hours Day and Night? This House must be safe, it must be reputable; they must be Ladies, and Ladies of Distinction, who must be answerable for the Person of Madam de Gesures; And where shall we meet with fuch that will be Slaves to fuch Complaifances? If they are Relations of Madam de Gesvres, the Marquis will suspect that House; if they're Strangers, and Persons indifferent, the very Proposition of fixing the Scene in their House, will be an Affront. How then shall we get out of this perplexity?

This shews that Co-habitation is only speculatively fair; for so soon as you descend to the Practick, you meet with unsurmountable Difficulties: And for this Reason our Forefathers were forc'd to prefer to it the Congressas monstrous as 'twas; for this Reason too, the Use of Co-habitation was not reviv'd, even after the Abolition of the Congress. In France all the

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Proofs of Impotency have been made to confift in the Inspection of the marry'd Couple, and this in Fact is the certainest way of all. For as to the other, it depends on the Concourse of two Wills reciprocally adverse, and incapable of mutually joyning in an Operation which requires

the most perfect of all Friendships.

This is what we thought our felves oblig'd to represent on the Behalf of Madam de Gesores with relation to triennial Co-habitation, and 'tis hop'd these Reasons will be thought no less cogent than those of the Plea and Replication. All that Madam de Gefores after this has to wish is, that she had fuch an Advocate to plead for her as the Marquis de Geseres has made choice of to plead for him; What Miracles, what Wonders might he not promife himself, if together with his Wit and excellent Talents he had a just Cause to defend! This we may judge from the good Countenance he puts upon a bad one: And in that Case Madam de Geswres wou'd not need to fight against Co habitation. He wou'd have so thunder'd against, and batter'd that Idea, it wou'd have been very infignificant to have attack'd her any manner of way.

BERNARD, Attorney.

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We don't propose in this Piece to resure

General ANSWER to the Marquis de Gesures's Memorial; Concerning the Necessity and Certainty of the Proofs of Impotency in General: As also concerning the Parallel of the Proof resulting from the Inspection of the Wife who affirms she's a Virgin, with the false Arguments borrow'd from the Configuration of the Husband.

THE Marquis de Geswes might have contented himself with scandalizing the Court by unheard-of Propositions, which had been so ill receiv'd by the Audience: We little thought he wou'd have taken the pains to spread em in the World, and less still to employ for this Use the Pen of a Writer renown'd for Gravity. But fince that Writer has been pleas'd to lend the Ornaments of his Style to such Paradoxes, he will give us leave to shew him how undeserving they are of such Garniture.

We

We don't propose in this Piece to refute Point by Point that of the Marquis de Gefores, such an Answer wou'd savour of Folly. We only propose to unveil the main Foundations of his System, because we affure our felves that to expose them to fight, is to inspire People with all the Contempt for 'em which they deferve.

The Memorial now to be answer'd, falls upon the Complaints of Impotency, as a prophane Novelty, contrary to the divine Institution; a scandalous Discipline, contrary to the publick Peace; and a fenffess Practice, in supposing Impotency can be discover'd. Sacrilege, Scandal, Nonsense; all these, our Author will have it, are the Concomitants of Suits commenc'd for Infufficiency: And from thence he leaves it to others to conclude, that, to re-establish good Order, fuch Suits ought absolutely to be banish'd, or the Proof thereof limited to the fole Inspection of the Man's Conformation, without suffering to examine the Capacity of fuch Conformation.

It is evident that this Project contains the Idca of a new general Regulation, and that the Author of it does not pretend to play the Canonist but the Legislator: There must be Laws spick and span New for the Marquis de Gesvres: This is barefac'd; fince in pag. 17. of his Memorial, he flatters himself that the Church will find

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a way, either by resuming the old Discipline, to reject as scandalous all Complaints of Impotency; or in rectifying the new, reduce such Complaints to certain Principles, and manifest Proofs, that is to say, Conformation. For if we are to take his Word for't, there's no other manifest Proof but Conformation. Now whoever talks thus, declares very plainly that he'll be try'd by no Canons, no Rules of the Church; since those Rules and those Canons make so little account of Conformation, they don't so much as mention it.

This necessarily engages the Marquis de Gescres to censure those same Canons whose Authority he slies from. According to him, there's nothing but Contradiction in their Decisions, Uncertainty in the Proof they have authoriz'd for the Discovery of Impotence, Scandal and Impurity in the Discipline of the Church. According to him, this Disorder has too long prevail'd, and he is come to put an end to t. Well then: let's hear this new Doctor, this Reformer of the Church's Laws, wifer than the Canons, and more zealous than the Popes for the Purity of Discipline.

His Exordium is, that the Sign, Reprefentative of the Union of Jesus Christ and the Church, whereby Christian Marriage is rais'd to the Dignity of a Sacrament, confists in the Indissolubility of the Bond:

A new Principle, and productive of ftrange Consequences! For 'tis clear, that if the Indiffolubility of the Bond (abstractedly confider'd, without any regard to the Party's Ability or Inability) is what constitutes the Essence of the Sacrament, nothing can hinder an Impotent from being capable of this same Sacrament. Do but fet afide and abstract that Impotency, and presently the Bond which shall tye him to a Wife, may be indisfoluble, and as fuch, represent the indissoluble Union of Jesus Christ and the Church; which will make a complete Sacrament of it. And according to this Principle the Author has reason to condemn Complaints of Impotency, not only as scandalous, but facrilegious too. And indeed nothing wou'd be fo facrilegious as to break a Bond which Jesus Christ meant for indissoluble. also reason to censure the Church, the Popes, the Doctors, the Prelates, the Officials, who in Cases of Impotency, have authoriz'd the Dissolution of the Bond, and in short he has reason to demand an Amendment of the Discipline of the

But if it is evidently false that the mystic Sign of the Union of Jefus Christ and the Church (which makes of Marriage a Sacrament) is inherent to the Indisfolubility of the Bond, then we shall have reason to cry,

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cry, What Theology's this! Whence has the Author fetch'd the Doctrine he preaches to us! We shou'd be glad if he'd instance some body that has spoken as he speaks! We know what Jesus Christ has taught, namely, that Man and Wife ought to be two Persons in one and the same Flesh: we know what the Apostle taught after him, namely, that the Husband ought to be the Head of the Wife, as Jesus Christ is the Head of the Church; we know what the same Apostle further teaches, namely, that the Husband's Body belongs to the Wife, as does the Wife's to the Husband. We likewise know what Consequence the holy Doctors of the Church, the Popes, and after 'em the Theologists, have deduc'd from these Principles; we are not ignorant that from thence they have concluded, that the Husband who is under an Impossibility of uniting himself in one and the same Flesh with his Wife, a Husband who cannot become her Head, by reason of his being unable to make her Flesh his Flesh, and her Bone his Bone; in short, a Husband who is out of Condition of acquiring over his Wife's Body, and giving over his own that reciprocal Power which the Apofile speaks of, is such a Husband as cannot represent on Earth the celestial Unity of Jesus Christ and the Church, and consequently his Condition refifts the Sacra-

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to y, ment of Marriage consider'd as a mystic Sign of that Union. Which makes his Union with a Wife degenerate into a Prophanation of the Sacrament, and such a Prophanation too as is the more sacrilegious, because under the august Veil of a Sacrament, it authorizes a continual Course of Impurities and Disorders.

And this is what oblig'd the Schools of Divinity to place the mystic Sign, not in the Indissolubility of the Bond, nor ev'n in the mutual Tradition of Bodies, but in the Possibility, or which is the same thing, in the Capacity which ought to be between the two Spoules for attaining that

Tradition.

Such is manifestly the Doctrine of the Church. Such too was that which Madam de Geswes's Advocate laid down for a Principle \*. For he said not, as the Author of the Memorial artfully supposes, that the Essence

<sup>\*</sup> The very Words of Madam de Gesvres's Replication (pag. 38.) are as follows: For this Reason the Theologists and Canonists make the Essence of Matrimony to consist in a reciprocal Delivery, or as the Doctors call it, Tradition, which the marry'd Couple ought to make of each others Bodies, if not in an actual Tradition, at least in the Possibility of such Tradition; whence it follows that where Tradition is impossible, there is no more than the Shadow of a Sacrament, there's no real Sacrament. The Cunning of the

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Essence of Marriage consisted in Commixtion, but plac'd it in the Possibility of the Tradition of Bodies; borrowing the Language as well as Doctrine of the School, and avoiding the filthy odious Term Commixtion, which the Author of the Memorial foists upon him, only to abuse him.

Now if after this he pretends, that the Maxim is, as he fays, false and impure, this Censure does not fall upon the Advocate of Madam de Gefores, but upon Pope Innocent III. who taught this Doctrine in Chapter Debitum de Big; on the Master of the Sentences, who has embraced it in Distinction 26; on St. Thomas, who, in the Supplement of the third Part (Queft. 58. Art. 1.) has follow'd the Master of the Sentences; and on Soto, who interpreting the foresaid Distinction 26. has likewise follow'd St. Thomas. The Author of the Memorial, 'tis like, did not foresee that his Blows wou'd rebound fo far; but 'tis for that very reason he ought to be warn'd of it, that he may take more Care another time.

These Truths, which have prevail'd in all times, must necessarily have regulated

the Author of the Memorial was in flurring over the latter Part of the forecited Words, which clear'd up the whole Sense of the Author of the Replication.

the Discipline of the Church, as to what concerned the Complaints of Impotency. For if it be true, that the Marriage of an infufficient Manicannotabe a Marriage. but only a Profanation; it is evident there never was a time wherein the Church cou'd be supposed norto avenge the Sanctity of an offended Sacrament. If it be true that the Co-habitation of an infufficient Husband with a Wife plunges both of cem into an Abyfs of Obicenities, nay monthrous and unnatural Oblicenities, then neither has there been a time when the Church can be fupposid to have been deaf to the Complaints of a Wife, who has implored her, with uplifted Handid to deliver ther out of this Abyle rollow'd the Maller stydA the

And to the end that the Author of the Memorial may once for all comprehend the Horrors of the Condition of the Wife of an infufficient Husband, we shall make use of a Comparison, which is indeed coarfe, but very proper for prefenting an exact and faithful Image thereof. The Wife of an insufficient Husband is said to be a live Body fastened to a dead one; and the Simile is just. For as a dead Body cannot enjoy a live one, because the dead are uncapable of Enjoyment; fo neither can an impotent Husband enjoy the Body of his Wife, which makes him be without that Rule of the Apostle, Mulier non babet potestatem

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testatem sui corporis, sed vir: As on the other hand, a living Body cannot enjoy a dead one, because the Enjoyment of a dead Body is not an Enjoyment, but a Punishment; so neither can the Wife of an insufficient Husband, enjoy his Body; which makes her be without that other Rule of the same Apostle, Vir non babet potestatem sui corporis, sed mulier: As in short all the Effects of the Conjunction of a dead Body to a live one, is to cause the live Body to putrify; so, in like manner, all that the Union of a Wife with an Impotent produces, is to infect the Wife with a Corruption, not fensible or corporeal, but intellectual and spiritual, and confequently more horrible, and more to be fear'd. Now if this be so, why will People have the Church to look on with indifference while both the Dignity of a Sacrament is so sinfully prophaned, and the Purity of Souls so essentially polluted; Carnal Doctors may think there's no great Harm in all this; but the reverend Doctors of the Church, the Ministers of the spotless Lamb, the Magistrates of the holy Ferusalem, do doubtless judge otherwise of it.

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Therefore it is certain, that in all Ages of the Church, the Diffolutions of Marriage, on account of Impotency, have made Part of the Ecclesiastical Discipline. Now if we don't find any Monuments there-

thereof beyond the time of St. Gregory, it is because before that time, the Secular Power claim'd to it self the Cognizance of Suits about Marriage; as is but too evident from an infinite Number of Laws, &c. of the two Codes of Theodofius and Justinian. But so soon as ever the Church was free, fo foon as ever her Authority over Marriage was acknowledg'd, she did, by the Mouth of St. Gregory, declare a Marriage null, on account of Impotency in the Husband; and a hundred Years afterwards, or thereabouts, she permitted another Husband, by the Mouth of Gregory the Second, to repudiate an uncapacitated Wife, in order to marry another. We have objected thefe two Examples to the Advocates of the Marquis de Gefores; but still they are incorrigible. They will have it that Complaints of Impotency were never heard of before the 12th Century, and thereby transfer to the Year 1300 the Pontificates of the First and Second Gregories.

If this Discipline of the first Ages be joyned with that of the latter, so fruitful in Complaints of Impotency, it will be plain that the Body of the Discipline was always the same. As indeed it is impossible for a Discipline that depends upon a Dogma to admit of any Alteration, because the Immutability of the Dogma that governs it, will not suffer it to vary.

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The Church indeed might have contracted or enlarged the Time of Penance as it faw Occasion: She might have sometimes extended, sometimes restrain'd the Degrees of Confanguinity, within which the Faithful might have been forbid Marriage. These Regulations always depended upon her Prudence, and for that Reason may have been occasionally alter'd; but the Church cou'd not sometimes approve. fometimes condemn the Marriage of an Impotent, nor consequently sometimes admit, sometimes reject the Complaints of Impotency. This necessarily results from the Connection there is in this particular, between the Doctrine and the Discipline.

If the Church of Rome, as a Particular Church, has said to some Husbands who found in their Wives Persons an invincible Obstacle to the Union of the Flesh; if, I lay, that Church has sometimes answer'd those Husbands, quas non potestis babere ut uxores, babeatis ut sorores, it necessarily said to the Wives who complain'd of their Husbands Frigidity, quas non potestis babere ut viros, babeatis ut fratres; and this difference had for Foundation the same which Nature put between the two Sexes. For as she establish'd Man to be an Agent, so the Part the gave him to act was that of an Aggreffor; and therefore it wou'd have been of ao manner of purpole to have said to the

Wife, habe virum ut fratrem: Since it had not been in her Power to have look'd upon him as a Brother, who wou'd not have

confider'd her as a Sifter.

This shews, that in no Case the Church of Rome cou'd have propos'd as a Law, or a Precept, fraternal Co-habitation. For the Terms of Brother and Sifter are relative Terms, which have their mutual Respects to two different Persons; but so necessarily too, that the Relation cannot cease in the one, but it must cease in the other. Therefore the Remedy, quam non potes habere ut uxorem, &c. necessarily supposes the Consent of both Parties, which Consent alone can maintain that Correlation, without which the Remedy becomes Poylon. Now if Confent be necessary, 'tis no longer any thing more than a bare Expedient; and for this Reason the Chapter Landabilem, which proposes it, requires that both the Spoules consent thereunto, si autem ambo consientiant, vir eam babeat, si non ut uxorem, Caltem ut fororem. The Husband ought to look upon the Wife with a Brother's Eye, and the Wife the Husband with a Sifter's. But they were necessarily so engag'd to look upon each other with fuch an Eye, si ambo consientiat: Without that, the Expedient is not practicable. Now wherever common Consent is requisite, 'tis no Law, but only a Piece of Counfel. What

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## Mademoiselle de MASCRANNY. 215

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What Illusion, therefore, is it in the Author of the Memorial, to give us for a Rule of Discipline, Pieces of Counsel and Advice, which the Church proposed to none but those who were inclin'd to embrace 'em! What Extravagance, to palm upon us, a Distinction of Discipline in two several Periods of Time, and this founded upon an Idea visibly false! There were no Distinctions of either first or second Periods, since the Doctrine being the same, the Discipline must necessarily have been so too.

Here therefore we fee that Complaints of Impotency are as old in the Church as the Exercise of her Authority over Marriages is. Here we find Discipline beginning as soon as possible it cou'd begin; we find it too perpetuated for near twelve Centuries. But alas! the Author of the Memorial is not pleas'd with it; that's enough, it must be abolish'd.

That which the Author cannot do directly, he endeavours to do obliquely and indirectly. Not hoping to perswade the Church to change her Discipline, he is resolved to render that Discipline impracticable, and thus he goes about it.

After having extell'd the Excellence of the Sacrament, his Conclusion is, that no Attempt can be made upon its Indisfolubility, unless forced thereto by Proofs supe-

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rior to all manner of Doubt; and then enumerating all the forts of Proofs, which the Canons have introduc'd, or Custom admitted, he finds none of them to his Satisfaction, or which affords that Certainty he requires. From thence he draws this Consequence, that if the Church might still lend an Ear to the Complaints of Impotency, it cou'd be for no other purpole, but to cast off and reject such Complaints on account of the Insufficiency of the Proofs. An Argument which is plainly a profane and irregular criticizing of the Conduct observed by the Church to this presency are as old in thys distingly

His fundamental Principal therefore is founded upon the Excellence of Marriage, confider'd as a Sacrament; but 'tis this very Excellence which renders Complaints of Impotency necessary, and which confequently requires that the practical Part of it be reduc'd to fuch Means as are possible. The more venerable and august a Sacrament is, the more impious and facrilegious is the Prophanation thereof by an Imporent; and the more horrible this Prophanation is, the more Care ought to be taken, not to render impracticable the only Remedy that can put a stop to it. And yet this is what the Author of the Memorial means todo, when he requires Proofs of a Nature, which are not to be found; at the fame time

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Mademoiselle de MASCRANNY. 217 time that he extols the Dignity of the Sacrament, he endeavours to render its Profanation irremediable.

There are in the Sacrament two Characters to be consider'd, its Indissolubility, and its Sanctity; And we may say, that the First is only a Consequence of the Second. Now if Complaints of Impotency can put its Indissolubility to any hazard, the Marriage of an Impotent inevitably sullies its Sanctity. Thus the very Interest of the Sacrament requires, that Complaints of Impotency may be reduc'd to a Point of Practicability; and for this reason the Church always avoided on these Occasions to put the Faithful upon an Impossibility.

In vain do they go about to furprize us by that famous Paffage of the Council of Lateran, Tolerabilius est contra statuta hominum dimittere copulatos, quam contra statuta Dei dividere legitime conjunctos: For the Point in dispute now, is not a Conjunction had and obtained against a Human and Ecclefiaftical Law, as was that the Council is speaking of, contra statuta hominum. What we are upon, is a facrilegious Union, fuch a one as is contrary to the Command of God and the Laws of Nature, confequently prohibited by the Divine Law. In the Case decided by the Council, the Divine Law was liable to be offended against, in taking one course: And in taking another.

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ther, there was only a Risk of violating a Law of the Church. The Council therefore finding the Danger less on one fide than t'other, prefers the last Course to the first. But in our Case the Divine Law is alike expos'd, take which Course we will: and as it wou'd be a Sufferer if the Marquis de Gesures's Marriage shou'd be injudiciously broken, so will it be no less a Sufferer, if it were injudiciously confirm'd. This shews that to apply in this Cause the Decision of the Council of Lateran, there must be an Alteration made in it which wou'd render it ridiculous, and make it perfect Nonsense. For thus must it then run, Tolerabilius est contra statuta Dei dimittere copulatos, quam contra statuta Dei dividere legitime conjunctos.

Thus, after all, what has been advanc'd on Behalf of Madam de Gesvres, is incontestable. The Judges, in Questions of Impotency, walk in a Path that has on each side of it a Precipice equally terrible, Dissolution of a Sacrament on the one Hand, and its Profanation on t'other. It were indeed to be wish'd that this Path was illuminated by the Light of the Sun. But if that's impossible, why shou'd People resuse the Torch which the Church presents? Why shou'd they reject the Proofs she au-

thorizes by her Canons?

Let us go further and see what Foundation the Marquis de Gesures's Advocates have for

Mademoifelle de MASCRANNY. 219 for pretending there's fuch uncertainty in those Proofs. They can't as yet tell us, that Experience ought to warn us to distrust 'em: For, of ten thousand Judgments which may have been passed in the Course of the last Age, in Causes of Impotency. scarce can they tell us of two which process of time has caus'd to be suspected of Error. And yet at that time they made use of a dangerous Proof, which the Church now fees it felf happily deliver'd from. And whether that be so or no, it is certain there is no founding an Experience upon two Examples, fall'n out among ten thousand during the Space of a whole Age. But again, what Examples are they! The first is that of the Sieur d'Argenton, who labour'd under an exterior Vitiousness of Conformation: I say exterior, for it appear'd after he was dead, by the opening his Body, that Nature had deny'd him nothing of what she grants to other Men; but that she had only hid in him a Part of her Donarives. The fecond Example is that of the Sieur de Langey, who undid himself by imprudently challenging the Congress. Thus, in the first Example, 'twas Conformation caus'd the Error; and the Congress, in the fecond. But all this concludes nothing against Canonical Proofs, fince the Canons never spoke of Conformation, or Congress.

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Furthermore; the Sieur de Langey's Example demonstrates how dangerous a thing it is to depart from the Proofs establish'd by the Church. And indeed, the Inspection of the Wise which is a Canonical Proof, declar'd it self for the Truth. Dame Langey's Person was found to be in such a Condition as a marry'd Woman's shou'd be; and if the Sieur Langey had held to that Proof, he had infallibly carry'd his Cause; but out of an Excess of Considence, he challeng'd his Wise to the Battle, and that was what ruin'd him.

If therefore 'twere possible to draw any Consequence from that, it wou'd be no more than this; namely, that whatever Stress was heretofore to be laid on the Congress, the same, be it more or less, is now to be laid on Inspection of the Wife. Thus Experience is entirely for the Church's

Proofs.

But perhaps our Adversaries will be inclin'd to battle the Proofs of the Church by Argumentation; and therefore I'll ask them, Have they a mind to be convinc'd by Argumentation, that the Rack is an Expedient hatch'd in Hell, and good for nothing but to save a strong-bon'd Rogue, to destroy an innocent Person of a tenderer Constitution? Nothing can be easier than to lay down such a Proposition: Nay, 'tis done to their Hand; for a certain Counsellor

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fellor of the Parliament of Besancon, not many Years ago, publish'd a Book, to prove the Uncertainty of the Rack, not only from Reason, and all possible Authorities, but likewise from an infinite Number of Experiments. Wou'd they have it prov'd to 'em by a thousand Arguments, that the Proof, by comparing Hand-writings, is the most dangerous of all Proofs. We may convince them out of a little printed Tract, wherein the Author fairly demonstrates, that nothing is more conjectural, nothing more destructive, than for Inquisitors to argue from the Strokes of Wou'd they be convinc'd by a Pen. Arguments, that the Rule of the Gofpel, in ore duorum vel trium tertium fat omne verbum, (that Rule, I say, which is practis'd in all the Tribunals of Europe) is a Maxim which feems only invented to facilitate Calumny, to oppress Innocence? This too will be easy to do; a little matter may ferve to corrupt two Witnesses. In short, will they be convinc'd by Reason, that the Method of Proceeding in France against Criminals, is a Snare perperually laid to catch the Accused? This too is a Demonstration ready made out to their hands, by Peter Ayrault in his Book intituled, L'Instruction Judiciaire. If therefore they will have no Proofs but what are absolutely demonstrative, Expositions su-L 2 perior

perior to all kind of Doubt, they must send far away the Rack, and the Proof by comparison of hand-writing, and the Testimonial Proof. They must likewise amend the Proceedings in Criminal Causes, and establish a new Method which may leave to the Person accus'd the same Facilities of defending himself as his Accuser has to destroy him. Thus you see how far this Argument wou'd carry us. But if we consult Experience, we shall find that these Proofs which seem suspected to human Wit, have hardly ever hurt the Innocent, because Innocence has always found within it self, wherewithal to desend it self, and to

make Truth speak in its Favour.

To apply this Ratiocination to the Proofs of Impotency. As the Order of the Se-cular Republic requires that there shou'd be some settled Methods of convicting Criminals; so the Order of the Ecclefiastic Republic requires that there shou'd be ways conducting to the Discovery of Impotency. For the Marriage of an Impotent is no less offensive to Purity, which is the Soul of this latter Republic, than Crimes are contrary to Tranquillity, which is the Soul of the first. And as it wou'd be ridiculous to forbear punishing certain Crimes till Conviction was attain'd by Demonstration as clear as an Arithmetical Truth; fo it wou'd be abfurd to omit suppreffing

Mademoiselle de MASCRANNY. 223 pressing the Obscenities of an Impotent's nuptial Bed, till his Impotency were as clear to the Eyes of those who are to judge him, as it is to hers who complains of him. As on the other fide, it very rarely happens that the Innocent falls a Victim of the Uncertainty of the Proofs used in the inquiry into Crimes; so it is almost impossible the Proofs establish'd for the Discovery of Impotency shou'd oppress a true Husband, a Husband who has to plead for him that Truth which the Canon si quis acceperit, calls, veritas viri. That Truth mention'd by Justinian, when he spoke of a Husband accus'd of Impotency, & ille

don't find it a hard matter to make it speak for them, so neither do they find it a hard matter to confound Imposture; and indeed Imposture seldom attempts such. If this has happen'd once or twice between Persons of Condition, 'tis a sort of a Miracle, and Miracles are never drawn into Precedents.

Word, that Truth which puts out of danger all who justly become Husbands. As they

quia in veritate vir est non ostendat.

This shews that the Proofs of Impotency derive their Strength from two Sources. They are at first convincing in themselves by the Relation they bear with the Truth that is sought after; and afterwards their Conviction is compleated by the Husband's

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weak Arguments against them. So we may say, that if they were impersed, the Husband, by not destroying them, gives them the last Degree of Persection which they wanted: For in short every Man is sensible in himself what Course he would take, were he in the Marquiss's Place; and there's no body but would say, What! shall I prove my self a Husband by Talk only? shall I call to my Aid the Artifices of Rhetorick rather than the Reality of Nature?

In order to shew the Forcibleness of this tacit Demonstration of Impotency which is gather'd from the Actings of the Marquiss de Gesures, let us examine those of the Sieurs d'Argenton and de Langey, and compare the

one with the other.

The Sieurs d'Argenton and de Langey reported a thousand Secrecies of the Nuptial Bed. The Marquiss de Geswes can cite but one, which to return him his own Language is a Lye so evident and so ill put together, that I dare say his Advocate with all his Gravity can't forbear laughing in his Sleeve at it.

The Sieurs d'Argenton and de Langey were the first to challenge all possible Eclaircissements; Inspection, Congress: 'Twas all one to them. The Marquiss de Gesures shuns nothing so much as Eclaircissements; he's afraid of the Light.

## Mademoifelle de MASCRANNY. 225

The Sieurs d'Argenton and de Langey shewed to the Searchers the Essects of a Capacity essential to a Husband, without which never any body was adjudged to be a Husband. The Marquiss de Gesves grants that he could not make appear to those who visited him ev'n the slightest Beginnings, the most imperfect Indications of such a Capacity, much less a compleat Token thereos.

The Sieurs & Argenton and de Langey, who demanded that their Wives should be inspe-Aed, would not (doubtless) have hung back. if a second Inspection had been propos'd.upon their own Persons. The Marg de Gesures, on the contrary, declares plainly in his Memorial, that it would be in vain to visit him any more, and that they would never find any Change in him. Now does fuch Language leave any Doubts? And if to this Confession, which arises from all his Procedures, which likewise issues from his own Mouth, we add the Conviction which would refult from a Canonical Proof, namely, the Inspection of Madam de Gesures, will not the Judges quatenus Judges & quatenus Men, equally espy the Truth? And can it be then faid, they make a random Judgment of Impotency?

What we have been faying shews in general, that Frigidity is not a Condition impenetrable to Human Wit, and that the

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Conscience of the Judge may be secur'd by unsuspected Lights: Now proceed we to compare the two Proofs which each Party oppoles to the other; the Wife's Virginity, and the Husband's Configuration. (I fay Configuration, for we shall continue that Word, norwithstanding the Grammatical Cavil of the Author of the Memorial: Not that we pretend to contest with him any thing in Grammar: God forbid! But because, in supposing with him, that the Word Configuration fuits none but things inanimate, it is in its proper Place, when applied to the Marquifs de Gefores.)

But before we enter upon this Parallel, we must demolish a Paradox of the Author of the Memorial, which may be called the

Key of his whole System.

This Paradox is, that when Confummation has been contested between Husband and Wife, it has always been decided by the Husband's Affirmation, without ever allowing the Wife to prove the contrary by her Virginity. This Proposition is diametrically opposite to the Decretal Proposuisti; for in shore, that Decretal, deciding between the Oath of the Husband and the Infpection of the Wife, gives it for the latter of these Proofs against the former, (if yer we may call a bare Oath a Proof) widetur igitur nobis quod test imonio septem Matronarum, qua illam per experientiam virginem affeveram, fides eft potius adhibenda. What

# Mademoiselle de MASCRANNY. 227

What does the Author of the Memorial do to deliver himself from the Authority of this Text? He seigns that the Decretal pronounces only between a Wise who has a Mind to make use of her Virginity as a Means to get her into a Convent, and a Husband who denies the Virginity purely to keep his Wise with him. So that, according to him, Impotency was not the thing disputed in the Case of that Decretal; and from thence he draws this general Consequence, that the Inspection of the Wise was never us'd but in order to qualify the Party for a Nunnery, and not to dissolve the Marriage of an Impotent.

I would know what Right he has to make Fictions? For the Decretal fays nothing of Religion or a Nunnery. But to

make Fictions against the very Words of the Text, is unsufferable. Did he not read these Words which the Decretal puts into the Wise's Mouth? Se nec à viro cognitam; nec potuisse cognosci. Or after he had read 'em, did he not comprehend that the Wise articuled two things? her Virginity, se nec à viro cognitam; the Husband's Impotency, nec

Point in Dispute between her and him. And if all the Business was to open to her an Access into a Cloyster, what Occasion had she

to reflect upon her Husband, and to reproach him for his Impotency? was not her Vir-

ginity

ginity enough for compaffing the Defign she had propos'd to her felf? The Author therefore of the Memorial in his Interpretation of that Text abounded with fomething else besides Confidence. I leave it to others to

call it by what Name they pleafe.

But let us go further, let us grant him out of Complaifance, that the Case of Impotency is not clear in the Chap. Proposuisti, what will he do with the Chap. Littere? Sure he won't deny Impotency to be the Ouestion there: The Words of the Text are too plain, ed quod non baberet vir ejus potentiam coeundi. Yet tho' Impotency was what alone made all the Difficulty, and tho' the Wife thought of nothing but how to get rid of a sham Husband, without aspiring after a Religious Life, the Judges had upon that Account ne'er the less recourse to the Inspection of the Wife to enable himself to judge whether she was a Virgin or no. This is manifest from these Words in the Chapter, Vos autem, ne id confiterentur in fraudem, à matronis bon a opinionis, fide dignis, & expertis in opere nuptiali, pradictam fecistis inspici mulierem, quæ ipsam retulerunt virginem adhus permanere.

This then shews that the Inspection ferved no less to determine Causes of Impotency, than to facilitate to the Wife an En-

trance into a Cloyster.

## Mademoifelle de MASCRANNY. 229

After this, who can enough admire, that the Author should go about to make us believe from his Say-so, that the Church trusted to the Wife's Inspection in one Case. and not in the other! That the Popes should err from the Paths of right Reason (this is shocking to say, but we must say it) that the Popes I say should so far err as to fancy that a Wife's Virginity might be discoverable or not discoverable, according to the different Fruits which the Wife propos'd to her felf from fuch fearch; that it might be discoverable when the Point was to open a Door for the Wife into a Nunnery, that is, tofacilitate to her a Work of Supererogation: and that it might not be discoverable, when the Point was to disengage her from an Impotent, that is, to bring her out of a State of Perdition.

If the Author had not read the Decretal Literæ, he might be excus'd; but he had read it, for he cites it; and what is yet more strange, he no sooner cites it but he cries out, In all this there's no mention of inspecting the Wife. Shall a Text say that in a Question of Impotency the Wife was inspected and found to be a Virgin, and shall that Text be said not to mention Inspection?

It is however visible, that the Author has taken for a Foundation to his Illusion, two or three private Doctors, who after having given to the Decretal Proposaisti the

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fame Meaning that every body else gives it, and after having explain'd it to mean Impotency, sling in by way of Guess these two or three Words; Vel forte intelligitur has litera quando mulier vult ingredi Religionem. This was only propos'd as a Doubt not to be built upon in any wise. And yet the Author of the Memorial lays hold of this Doubt; and what he finds advanc'd as a very uncertain idea, under the Passport of a vel forte; he makes a flagrant and indubitable Doctrine; and gives for manifest what he received as very doubtful and uncertain. To such a Bulk do little things grow when they pass through his Hands!

Propositivity turn'd upon a Question of Impotency, our Cause is decided. Human Subtlety cannot find the least Difference between our Case and that of that Law. What need is there then to look out for other Rules, and what Occasion to philoso-

phize so very much?

To this Decretal is oppos'd the Authority of the Canon Si quis acceperit, fetch'd from the Decrees of an Assembly held at Compeigne in 757. These are the Terms of that Decree, as they are found in the Collection of Councils: Si quis acceperit uxorem, & ipsa dixerit quod vir non manserit cum ed, & vir dicit quod sic fecit, in veritate viri constat, quia vir caput est mulieris. De muliere qua

Mademoiselle de MASCRANNY. 231 que dicit quod vir suus maritale debitum ei non reddidit, consensit Georgius.

It is manifest that the Wife complain'd not of her Husband's Impotency, but only of his Contempt of her, maritale debitum ei non reddiderat: It was not want of Ability but ill Humour the tax'd him with ! She did not fay non potuerat manere, but that non mansifet cum ed; the Husband on his Part answers the Complaint of his Wife, by affirming he had done his Duty. Upon this the Assembly decides, that the Husband's Oath must be abided by, because he's the Head of the Woman; a Reafon which would have been ridiculous, if the Queffion had been about Impotency? Since an impotent Husband can never be the Head in respect to a Wife; and therefore to give him that Title of Head, pre-supposes for certain that he was no Impotent.

It is then clear, that the Decree of the Affembly of Compeigne is a Stranger to Impotency. But let us leave to the Author of the Memorial the Liberty to explain it as he thinks fit; suppose we grant him that it has been decided in the general Thesis, that the Husband's Oath ought to cut off Questions of Impotency; how will he reconcile that general Rule which was inserted in the Body of Canons, with another Rule no less general taught by Canon, Quod autem, taken from the 6th Book of the Capitularies?

The

The Terms of this latter are thefe: Vir 6 mulier si se conjunxerint, & dixerit postea mulier de viro quod coire non possit cum ea, si possit probare quod verum sit per justum judicium,

accipiat alium.

According to this last Rule, the Wife is admitted to prove the Impotency, provided her Proofs are juridical, and she has for her what the Canon calls justum judicium; si poterit probare per justum judicium, accipiat alium. If this be fo, she is not tied down to the Husband's Affirmation, and in this Cafe the General Rule of the Decision of Compeigne will, if understood of Impotency, suffer an Exception; fince it will be no longer true to fay in veritate viri confistit, when the Wife is receiv'd and admitted to vacate her Husband's Affirmation by a contrary Proof.

We must therefore, to reconcile the two Canons, stick to a Decision taught by all the Gloffes, namely, that the Husband's Affirmation is decifive when the Wife is without Proofs, but when the has Proofs

her Proofs are decifive.

Now if any body should ask what Proofs the can bring, the Gloss of the same Canon Quod autem gives Answer in these Words, Justum Judicium intelligit per Aspectum corporis, si virgo est, quia aliud est in corruptă. If therefore the Wife is a Virgin, she may according to that Canon oppose her Virginity to the Oath of her Husband; and this is what

Mademoiselle de MASCRANNY. 233

what is taught by above ten other Gloffes; but because of the great Number, we will select one or two of them that are most material.

Upon these Words of Chapter Accepisti, de Frigidis, which seem to defer the Judgment of the Question to the Husband's Oath; upon these Words I say, Tibi credendum est quia caput es Mulieris; the Gloss says, Hoc intellige quando Mulier non probat se Virginem per aspectum corporis. Upon the like Words of Chapter Continebatur, which is not in the Case of Impotency, but which the Author of the Memorial does however cite, the same Gloss says, Hoc intellige quando Mulier non probat se Virginem per aspectum corporis. It is but reasonable, says it, that in case of Doubt the Question should be cleared up by the Husband's Oath; but to take from a Virgin Wife the Liberty of clearing up the Doubt by the Proof of her Virginity; this is far from the Intention of the Canons; Hoc intellige quando Mulier non probat se Virginem. And indeed it were ridiculous that the Certainty of a Proof which like that of Virginity falls within the Cognizance of the Senses, should be surmounted by the Oath of an Interested Party.

Now if from the Gloss we pass to the Doctors and Canonists, what a Cloud of Authorities will they not furnish! We are again oblig'd to select some of them, and to refer to the several Passages themselves,

because

because it would take up too much time to discourse of them with that Extent of which they are capable \*.

These great Men, whose Names appear here, are the very Flower of Canonical

Science;

\* Sanches, lib. 7. Difp. 109. n. 6. Secunda temperanda est Conclusio, nisi uxor per aspectum probat fe non cognitam à viro, ut quia reperitur virgo, à Matronis illam inspicientibus, tunc enim potius creditur Uxori, neganti copulam, quam Viro affirmanti; and to prove his Proposition be cites an infinite Number of Authorities.

Decius upon Chap. Proposuisti, compares the Proof refulting from the Affirmation of the Husband who swears be bas consummated, with the Proof which results from the Virginity of the Wife, and be says that the latter bears away the Bell from the former, as being more certain: Tertio nota quod licet fletur juramento alicujus, hoc intelligitur nifi contrarium probetur; & probatio for-

tior prevalets & illa que potentior est attenditur-No. 3. 8 6.

Hoftiensis in summa de Frig. Si autem Maritus afferat se cognovisse uxorem, Muliere contradicente & divortium petente, ftandum eft Verbo Viri qui eft caput Mulieris, nisi Mulier ipsum convincat de perjurio per aspectum corporis, sit enim probatio per inspectionem: Ergo si Mulier est corrupta, caveat cui nubat, quia standum est verbo Viri, nec corrupta poterit se Virginem oftendere cum non sit.

Anchoranus upon Chap. Proposuisti. In virginitate probanda testimonium Matronarum affertioni Viri præfertur, primo nota quod licet jus præsumat Mulierem cognitam à Viro, si cum eo permansit ; tamen contradictam præsumptionem admittitur probatio in con-

trarium.

Mademoiselle de MASCRANNY. 235. Science; and we may be bold to say, that we leave nothing un-cited when we cite at once Innocentius, Hostiensis, Andreas, Panormitanus, Decim, Ancharanus, Bobicus, Bellemera, Zabarella, and Sanchez. Most of these Authors have in fact been either Popes.

or Officials, or Delegates, and not one of 'em that was not perfectly vers'd in the Practick of the Canons: So that when they concur, we may look upon their

Ægidius Bellemera in Cap. Propos. Testificatio Matronarum in virginitate probanda assertioni Viri præfertur.

Jean André upon Chap. Accepisti de Frig. Quod quamvis maritus neget (that is neget se frigidum) non obstabit sua contradictio, si probari poterit contrarium, vel improbari ejus contradictio per aspectum corporis Mulieris.

Panormitanus in Cap. Proposuisti. Testimonium. Matronarum quæ Virginem per aspectum corporis

affeverant, juramento Viri præfertur.

Hostiensis upon Chap. Proposuisti, speaking of the Proof arising from Virginity, and comparing it with the Oath of the Husband, says it is no wonder that the first surmounts the second, since probatio ad oculum alias vincit.

And Innocent IV. upon the fame Text, Non eft me-

lior probatio fecundum Canones.

Henricus Bohicus, upon Chapter Continebatur, De Dispons. Impub. Probatio per aspectum corporis quoad cognitionem carnalem aliis præsertur; and when he uses this Expression, aspectum corporis, be means the Inspection of the Wife, since he refers to Chapter Proposuisti, wherein that Sort of Visitation is all that is spoken of.

Writings

Writings as an excellent and compleat Body

of the Church's Practife.

After therefore so many learned Masters. in the Practice of the Church, have some of 'em declared, that in probanda virginitate testimonium Matronarum assertioni viri præfertur; after others of 'em have told us, probatio per aspectum vincit omnes; in short, after others have fet the same Proof above any Proof whatever, by faying, there was none better according to the Canons, non est melior probatio secundum Canones. Who or What could give a Right to the Author of the Memorial to tell us, pag. 41. of his Work, that instead of finding in the Doctors that the Inspection of the Wife is admitted in contradiction to the Husband's Affirmation, on the contrary they therein give all the Credit and all the Belief to the Husband's Oath, and the Inspection of the Wife is rejected as a frivolous, equivocal and deceitful Proof?

If it is an inexcusable Liberty to make Doctors speak things hap-hazard, and without being authoriz'd by them, by what Name must we call the Author's Licenti-ousness, who attributes to 'em an irrational Doctrine diametrically opposite to what they have really taught? If a Choice were to be made, it were certainly better to divert the Publick, than so to mis-inform 'em.

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Thus therefore we find the Inspection of the Wife authoriz'd as a Proof of Impotency,

Mademoiselle de MASCRANNY. 237 tency, by the Laws and Constitutions of the Church. But this is not all; 'tis certain those Constitutions and those Laws approv'd thereof only because they found the Usage of them establish'd. The Decretals, proposuisti & littera, don't speak of it as a Practice newly introduc'd. On the contrary, every thing therein shews it to be a current Usage, and known in the World before the Decretals themselves. And as we find it in vogue in the Time of St. Cyprian, who made use of it for the distinguishing real Virgins from fictitious ones, it is reasonable to presume (till the contrary be prov'd) that the Inspection of the Wife is one kind of Proof which has pass'd from Age to Age, by Tradition, from the first Age of the Church to that of Greg. VIII. and Honorins III. the Authors of the two Decretals: and from the Time of those two Popes, it has been perpetuated unto our Days by the same Canal of Tradition: Witness the Writings of the Canonists forecited, and the Examples before or after the Abolition of the Congress, and which have been produc'd on the Behalf of Madam de Gesores, either in the Plea or Replication. When after this a formal demure Writer contradicting so many Proofs, (against his own Conscience) is so hardy as to lay, that the Inspection of the Wife has not the Beauty but Vice of Novelty; Does such a Man deserve to be answer'd? In

In any other Affair it were enough to plead the Custom and Law, but in this it is not for we must defend the Law, we must defend the Custom against the Insults

of the Author of the Memorial.

His Objections against inspecting the Wife may be reduc'd to two, r. 'Tis a Proof abolish'd with the Congress. 2. 'Tis a Proof uncertain in its Indication; uncertain in its Consequences. In its Indication, because Virginity cannot be indicated by certain Signs; in its Confequences, because the Husband's Impotency is no neceffary Consequence from the Wife's Virginity; Conformity between Inspection and Congress; Uncertainty of the Proof resulting from Inspection: This is what is oppos'd to us, and we may fay the first Objection is confounded in the second. For if you mind it, you'll find that the only Refemblance, fancy'd by the Author between the Congress and Inspection, is reduc'd to a pretended Uncertainty, that is to fay, according to him, the Inspection is no lefs uncertain than the Congress, and so the first of those Proofs hangs on the other at least by one Corner, viz. the Uncertainty common to 'em both. The Author's Idea goes yet further. For as he supposes all the Proofs of the Church to be alike uncertain, he from thence concludes that the Congress being proscribed, implies the Pro-

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Proscription of all the other Proofs: Thereby he returns to his chief Aim, which is to maintain, that the Church is without Proofs, when she goes about to detect Impotency; and therefore no Complaint of Impotency ought any longer to be listned to. But at present this is not the Point in hand: What is essential and certain is, that according to him the Decree that has banish'd the Congress has likewise banish'd the Inspection by an Identity, or Parity of Reason, and this Reason is the Uncertainty.

'Tis reducing to Dust the Objection, to take away the Ambiguity of the word Certainty or Uncertainty; by Favour of which the Author makes a Sport of the Inatten-

tion and Credulity of his Readers.

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We must therefore observe, that there are two Sorts of Certainties; one that concludes from Necessity, from Infallibility, and this is what is sometimes call'd Physical Certainty, sometimes Demonstrative Certainty, according as the Case is. The other, which concludes only from Probability, ex probabili; and this is call'd Moral Certainty. The first of these Certainties has for its Warrant, either the necessary Relation of an Effect with its Cause, and that is Physical Certainty; or a Concatenation of Consequences which run back into an incontestable Principle wherein they unite as in their Centre, and this is Demonstrative

monstrative or Geometrical Certainty: But the other Kind of Certainty, which is call'd Moral, has no other Warrant than Experience, which evinces to Reason, not that 'tis impossible, but very difficult, for the Idea which offers it self, to be false.

In all human Affairs, and especially in Inquiries into occult Facts, it is impossible to meet with either Physical Certainty, or Demonstrative Certainty, or indeed any Kind of Certainty, which concludes ex necessario; and for this reason we are oblig'd to take up with Moral Certainty, which only concludes ex probabili. To demand more, is to desire that Men may not be try'd; 'tis procuring Impunity to all Crimes; 'tis overturning Judiciary Order. Some Examples will illustrate this Thought.

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A dead Body is found newly kill'd, and just by it a Man with a Sword all bloody; another suspected of Thest, is seiz'd with the Goods upon him; and lastly, in the House of another accus'd of Coyning, are found the Instruments proper for the Exercise of that dangerous Trade. All this does not conclude necessarily, that those People are guilty. It is not impossible but the Man with the bloody Sword, happen'd accidentally to pass by that way, and that his Sword was stain'd with defending its Owner E VA S W. A

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Owner against some wild Beast. Neither is it impollible that fome Enemy, nay, even the true Malefactor, might convey the stollen Things into the Pockets of the one; and into the House of the other, the Instruments above-mention'd. This has sometimes happen'd, as every Body well knows: And yet the in these Cases Innocence is not a Thing impossible, and confequently the Proofs conclude only ex probabili, the Judge does not make any Scruple to pass Sentence of Death upon fuch Probability.

And without going farther, the Condormition of two Persons of different Sexes. if not marry'd, is not a Proof which phyfically and necessarily concludes for Adultery; but because it carries with it a vehement Probability certam, as the Canons have it, & violentam Suspicionem, there is no Judge that makes any Difficulty of giving Credit to it, and of holding the Adultery to be made plainly out, upon the Consequence which he draws from thence.

Now, let us ask the Author of the Memorial, whether he requires the Proofs of Virginity to be certain, physically and infallibly certain, according to the Order of Nature, and the Concatination of natural Causes? or whether he would be satisfy'd if they produce a moral and probable Cer-

tainty founded upon Experience?

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In the first Place, we answer, that he demands an Impossibility, and such a Sort of Certainty as our Courts know nothing of.

In the second Place, we do say, that the Proofs of Virginity are of a moral and probable Certainty, which has Experienc for its Warrant, which is sufficient to satisfy the Conscience of the Court. And if he will be so bold as to deny that these Proofs have a moral Certainty, we ask him, Who shall be our Judge to decide the Question between us? Will he have the Official determine the Degree of Certainty produc'd by the Tokens of Virginity? Would he have him stain the Purity of his Priesthood, by dipping into such Filthiness?

This he must do, since he proposes, as a Means, the pretended Uncertainty of those Tokens; and since there is no judging of the Question, without judging of the Means. But let us grant that this may be done without prophaning the Priesthood; nay, I will grant, (tho God forbid it should be so) that the Official's Capacity does extend to that Length. Did ever any Judge set himself up a Judge of that Art? Did ever any Judge take upon him to decide how far that Art might carry its Discoveries? If that were so, and if the Judges were competent in that Art, they

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Mademoiselle de MASCRANNY. 243 they would have no Occasion for Searchers: They would be Searchers them-

Lerdone the Anthet 3 Let us here refirme the Example of Comparison of Hand-Writing; for nothing can better illustrate our Thought. Let a Forger of Hand-Writing, who is convicted, or upon the Point of being fo, from the Reports of Searchers upon a Comparison of Hands; let him, I fay, take it in his Head to declaim against the Uncertainty of the Art; must the Judge needs lay aside all his other Business to turn Scholar to a Writing-Master? And yet there's no Help for it; he must go to School, if the Reafons of the Memorial had any Weight in them. For how could he judge of the Uncertainty of an Art, without he had study'd the Art?

What is it then that dispences with him from studying that Art? It is this: Without examining whether the Art be certain, he relies upon the Honesty, Capacity, and Prudence of the Searchers. He supposes before-hand, that those Searchers will not return a certain Resolution upon Conjectures which shall not at least have a moral and probable Certainty, fuch as the Art is capable of affording; and afterwards upon their Report, whe passes a Judgment, which would be ne'er the less folid, even though the Art were uncertain,

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because there is no using an Art but as we DIDOW IN

Let therefore the Author of the Memorial know, if he pretends that in the Search after Virginity, the Art of the Physicians, the Surgeons, and the Matrons is defective, he ought not to fay it either to us, or to the judges; because neither we nor the Judges are capable of knowing wherein the Certainty of the Art may be short and obnoxious. It is for the Searchers, after they are nam'd, that all these Speculati-

ons ought to be observ'd.

As for us, our Duty, as well as that of the Judge, is, to rely upon the Experience and Fidelity of fuch of the Searchers as shall visit Madam de Gesores, and judge of her Virginity from the Condition of If they think their Art canher Person. not afford them any Thing but uncertain Lights, they will be so honest as to declare it: If on the contrary, with the Help of their Art, they discover any Uncertainty, they will take Notice of it with the same Sincerity; and in either Case, the Conscience of the Judge will be fecure.

Here we may hold with Confidence, and not stir a Step farther: And yet because the World is fill'd with Clamours, and the Physick School with Disputes, concerning the pretended Uncertainty of the Proofs of Virginity, we will not let the Question

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### Mademoiselle de MASCRANNY. 245.

pals without taking some Notice of it: But let them not expect that we should call into Court a Troop of Physicians with hard Names, to liften to their Reasons, and afterwards to decide from them. The School of Physick, to which we are only the prophanum Vulgus, would take Offence at it. Twould be too great an Invasion of their Rights. We will confine our felves to one fingle Author, cited by both Parties, and confequently unexceptionable to both Sides. This Author is Paul Zachias, an eminent Man, and fo much the more to be valu'd in this Question, as he treats the Matter, not only like a Physician, but a Lawyer.

He recapitulates in his Discourse, (in the first and second Questions of the sourth Book, Tit. 2.) that no Body disputes that there are Tokens of Virginity; but that the Contest in the Schools of Physick, is concerning the Nature of the Certainty of those Tokens. Whether is it an infallible Certainty, as the Followers of Pineius pretend, or is it only a moral and conjectural Certainty, as others pretend? This is all the Dissiculty, and this the Reason why Zachias does not form his first Conclusion by a general Negative of all Sorts of Tokens, but by a Negative of their absolute

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Certainty, and of their Infallibility. He does not say nulla dantur nota virginitatis,

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but nulle dantur certe & inseparabiles virginitatis note; where the Word inseparabiles stands for infallible, because an infallible Sign is inseparable from the Thing fignify'd, as Smoke is inseparable from Fire. Thus all that can be faid, according to this Author, is, that the Assurance that may be drawn from the Tokens of Virginity, is not fo strong as that which Fire gives us of Smoke, or Smoke of Fire.

But this does not hinder but that we may draw a moral Certainty from it, or an Affurance of evident Probability, which may be enough for the Judge in an obscure

and difficult Point.

The fame Author, in the fecond Queftion, explains to us wherein confift the Tokens of Virginity. He enumerates fix, and concludes his Argument thus, viz. That the Concurrence of these fix Signs forms not only a bare Conjecture, but a manifest Conjecture of Virginity; and he adds, that upon this Conjecture a solid Judgment may be pass'd concerning the Integrity of a Virgin; that is to say, by the Concourse of the Signs to a certain Number, a Man may come at a Certainty, not physical, but moral, of the Secret he is diving into. Itaque bec omnia figna fimul conspirantia integra virginitatis evidentem conjecturam prebent: nam quod fingula per se testari non possunt, simul unita poterunt. Quamobrem

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obrem si illa ipsa que jam notavimus signa; & ea que infra notanda veniunt apparebunt, non inane de virginitatis incorruptabilitate judicium ferre licebit.

Now let them tell us, that Virginity cannot be prov'd but by Conjectures, it is true; but those Conjectures are evident,

evidentem conjecturam prabent.

'Tis only upon Conjectures of this Nature, that Mortgage-Contracts are made void, when they bear the three Marks of Usury, Lowness of Price, Power of redeeming, and the retaining the Possession by the Seller. Each of these taken fingly, is, strictly speaking, nothing; but when taken all together, they are a never erring Proof; and by this Means one Certainty is made up of many Uncertainties.

Thus, according to Zachias, it fares with the Signs of Virginity, qua singula per se testari non possunt, simul unita poterunt. One of those Signs is not enough; there must be a certain Number of them; in short, there must be enow of them to enlighten the Searcher; and this depends upon

his Conscience and his Prudence.

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Let us fay therefore that the Search after Virginity has nothing that distinguishes. it from all other Searches after occult Facts; fuch as are, for Example, occult Crimes. The Proceedings are by Way of Argumentation, by Way of Presumption; and from what:

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what the Eye fees, Inferences are made for what it cannot fee. Rays are gather'd from all Sides, and from these kays asfembled, a Light is form'd, which the Judge ought to be fatisfy'd with, for two Reasons: First, Because it is impossible for him to fetch a Light elsewhere. Secondly, That even though the Light that is form'd from the Affemblage of Rays were imperfect, still must be decide in Favour of the Party who proves, tho' imperfectly, against the Party who proves nothing; especially when the Party that proves nothing, should have it very much in his Power to destroy the Proof that is fet up against him, if the Truth be on his Side.

We shall be after this told of Medicaments that restore lost Maidenheads; we thall be baited to Death with one Carratola, the Point of a Lancet, and a hundred other Tales, nay, the Jesuit Commitolus shall be impertinently rais'd up against us: But how can they make Use of the Examples of Carratola and a Lancet? Do not they apprehend that these Stories, were they true, would destroy the Propofition they would fet up? For if the Medicament depriv'd Carratola of the Faculty which Nature had form'd in her; if by the Means of Astringents another Woman becomes impenetrable to a Lancet's Point, why, a God's Name, are these Prodigies?

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It is because: Art can never imitate Nature perfectly; it goes always either too far or too short, and oftner the first than the last. Now if it is impossible for Art to imitate Nature perfectly, it is therefore impossible for it to deceive; for it only deceives so far forth as it imitates Nature.

The Marquis de Gesvres, who perhaps is but too well acquainted with the Force of Astringents, would make believe that Madam de Gesures is capable of making Use thereof. We forgive him this injurious Reflexion, with a great many o-

thers.

But as for the Author of the Memorial, there is such a Meanness in his marginal Note, Page, that furely the Publick will never pardon him; for can any Thing be more boyish, than to argue thus? Madam de Gesvres has ascrib'd her Husband's Impotency to Astringents; therefore she knows the Use of Astringents; therefore she is capable of making Use of them in order to appear like a Virgin. In Truth, as throughout this Memorial 'tis difficult to know the Author otherwise than by the Style, so it here would be absolutely impollible to know him.

As for the Jesuit Commitolus, the Author makes a Partisan of him, only because he turns into a Decision what the Jesuit offers as an Objection. The Words quoted by the Author

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Author of the Memorial are indeed in his Book, but they are only in the Course of the Argumentation; for as to the Decifion, it runs thus: Sed tamen à communi sententià recedendum non est, cum puella virginitas sine ejus crimine & infamià explorari potest: Terms which shew that that Author held for certain, both that Virginity could be discover'd potest explorari, and that that was the common Opinion from whence there was no departing, à communi sententià non est recedendum. We shall say nothing of another Casuist, nam'd Basilius Pontius, whose Book we have not by us; but we will take upon us to fay, that to be able to judge of the Degree of Certainty produc'd by visiting the Wife in Questions of Impotency, a Man must be something more than a Cafinift.

It is therefore now prov'd, that Infpection may afford an Indication of Virginity, if not physically, at least morally cer-It remains to fee, whether a prov'd Virginity gives a Right to conclude Impotercy; and this shall soon be dispatch'd.

It is certain, that to judge from Experience and the ordinary Course of Nature, every Husband whose Wife is still a Virgin, after having cohabited with her a considerable Time, is either an Angel or an Impotent. But as Impotents are not fo use as Angels, it would be ridiculous, when

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a Virginity is juridically evidenc'd, to feek for the Cause of it any where but in Im-

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And if the Advocate of the other Side pleads, that 'tis not however impossible but. a Man, who is really a Man, may impose Continence on himself, in Company with a lawful Spouse; if it is added, that it is not incompatible even with Condormition; that Contempt, Odd-humour'dness, Interest, and a thousand other Causes, may induce a Husband to withdraw himself from the conjugal Duty; that there are Examples of fuch, and that if we are to believe Geoffry of Vendome, the Founder of a certain religious Order, did much greater Miracles; if, I fay, they fet against us all these Reafons, the Answer will be, that indeed such Examples are fo many Miracles, but that Miracles are not wrought every Day; and that even tho' they were possible, their Poffibility would not shake the Solidity of a moral Demonstration.

Would, after all, any Thing in the World be certain, if, in order to try Men, there must needs be such a Certainty as that the contrary should be physically impossible? It is not physically impossible, but the Contract which bears the three Marks of Usury may be guiltless of Usury; it is not physically impossible, but he who is found with a bloody Sword near the

Body

Body of a Man newly kill'd, may yet be innocent of the Murther; and no in the other Examples before-mention'd, there is a physical Possibility, that he who is acousd of Theft, may however be innocent, the the Thing stol'n be in his Pocket; and likewise, that he who is taken up for coining, may be innocent of that Crime, tho the Instruments be found in his House. All this is physically possible; but the Law does not stop at every physical Possibility, because its End is not Physicks but Morals.

For the same Reason, we say, that if it is physically possible for the Husband to be a perfect Man, and yet the Wife a Virgin, 'tis enough for our Purpose, that the Concurrence of those two Things, Potency in the Husband, and Virginity in the Wife, is

morally impossible. I want of our adjusts

In a Word, it is enough for us, that it is contrary to the ordinary Course of Nature, which alone can fupply the Judge with Prefumptions for judging of what cannot come within the Senses. And this is the Reason why Virginity furnishes a convineing Argument of Impotency; nay, we may fay the only convincing one. And therefore Innocent IV, speaking of inspecting the Wife, did not flick to affirm, that it was, according to the Canons, the fureft of all Proofs, non est melior probatio secundum Canones. The Made a finer brund at only

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Let us therefore abide by our Canons, fince we have no other Rules. The Libertinism of Reasoning, which is the epidemical Distemper of secular Doctors, is uneasy, and can't bear the Yoke of those Rules, because Man's proud Spirit cares not to be govern'd; but what will be the Event, if we transgress the Bounds which our ancient Fathers have let us? The same that was in the Days of our Forefathers, \* when the first Heresiarch of the latter Times submitted Scripture to the Criticism of the People. Every one abounding in his own Sense, took upon him to be Judge of the divine Word, and from thence sprang up so many Sects, that Vermine, which, at this Day, gnaw the Coat that is feamlefs. d A grander

In like Manner, if People bear with the audacious Liberty assumed by the Author of the Memorial, of making himself a judge both of Discipline, and of the Canons of the Church, every Man will frame his own Rules, every Man will constitute himself Head of a Party; as many Canonists, so many particular Sects, who will tear to Pieces the Doctrine, and, at length, reduce it to Ashes, which will make it be blown away by every Wind; and thus the Judges will be like

<sup>\*</sup> Noli transgredi terminos, quos posuerunt patres antiqui.

like the Dove out of the Ark, which had no Place where to reft her Foot.

Can one, after this, believe, that the August Parliament which exterininated the Congress, meant with the same Stroke to cut the Throat of the Canons, and of all the canonical Proofs? What a Notion!

What Extravagance !

The Congrets was a Monster, which was newly usher d into the World without Law, without Title, and without any Paffport at all. Inspection of the Wife is a Proof of almost equal Antiquity with the Church, confecrated by a Law of the Church, and authoriz'd by the perpetual Ufage of the Church, so perpetual, that it has pierc'd thro' an Abyss of Time to come down to

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The Congress was abolish'd, because it had led the Judges into an Error in the Business of the Sieur de Langey. The Inspection of the Wife was so far from doing so, that it's fole Business was to fet the Judges right. The Congress was dangerous, because its Success depended upon the uncertain Motions of Nature, and was not repeated without Difficulty; fo that one untoward Quarter of an Hour decided the State of a Man. On the contrary, Visitation is nothing but the Inspection of a real and local State, which is ever the fame, and subject to no Vicissitude. Again, the

the Congress depended upon the Concurrence of two adverse Parties, one whereof (the Wife) might eafily supplant the other, as Tagareau frequently observes. Whereas the Visitation requires of the Wife no more than a little Patience, which she will gladly lend as a Ranfom for her Modesty. If after this, there's any Indecency in the Visitation, is it any Thing like the Infamy, the Turpitude of the Congress? A mad Man may fay it, a furious Declaimer may put these two Things in Parallel; but a wise Man will never suffer himself to be so far transported. Amidst all those Characteristicks, which so essentially distinguish the Inspection from the Congress; how can any Body confound them, how suppose them involv'd in one and the same Condemnation? Does the Decree of Langey mention the Inspection of the Wife? Are not the Terms thereof confin'd to the simple Abolition of the Congress? Is there any general Expression, which accepts of the other Proofs of the Church, and which rejects the Usage of the Visitation? Nay, fince the Congress has been abolish'd, has the Inspection been laid aside? Has it not been prov'd from the Examples at Paris, Rennes, Aix, and Langres? What Warrant then has the Author of the Memorial to tell us, that the Visitation and

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the Congress have had one and the same Fate? because, says he, ubi eadem ratio, idem jus. Thus with a pitiful Excerpt out of a Common-place Book, he thinks to impose upon us. But after the differencing Characteristicks which we just now mention'd, his Identity of Reason becomes a Chimera. And tho' that were not fo, can he have forgot that the doughty Maxim, ubi eadem ratio, idem jus, never takes Place but in Matters subjected to Reasoning? But in fuch as depend upon a positive Law, as is a Decree of Regulation, it is not faid, ubi eadem ratio, idem jus; on the contrary, it is said, ubi Lex non distinguit, nec nos distinguere debemus, or quod Lex omist, & nos pro omisso habere debemus. But I take too much Pains to baffle an Imagination fo irrational, an Imagination whose Author cannot any other Way excuse himself for making Use of, than by the Rule, Necessity has no Lam.

Now, after having evinc'd from the Authority of Antiquity, from the Canons, from constant Practice, from the Certainty as well of Indication as Confequence, the Regularity and Conclusiveness of the Proof refulting from the Inspection which we demand, we shall proceed to that other Proof of a new Invention, which the Author of the Memorial, by a Strain of Genius, exalts above all others; I mean the Confor-

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Mademoiselle de MASCRANNY. 257 mation; and I call it Conformation, be-

cause I speak of it in the general Thesis, without Application to the Marquis de

Gefores.

The Difference between this first Part which we have done with, and the fecond which we are entring upon, is this, in the first, the Author has only copy'd the old Declamations which the Tribe of Impotents have perpetually made use of, tho' in vain, against the Inspection of the Wife. But in the fecond, he borrows nothing from any Body, 'tis all his own, and may be truly call'd an Original. Is Conformation alone decifive for the Husband? This is our Queftion, upon which I would first and foremost ask him whether it ever was decisive. For if it never was decisive 'till to Day, we have great Reason to distrust this Principle of Decision. We are not unduly sensible, that he alledges fix Examples; but we have already confuted those fix Examples, and shall yet farther confound them before we have done.

If we ask Justinian how Impotency is to be discover'd, he will answer, that the Husband must shew bimself a Man. But does he require no more than the bare Exhibition of the Figure? Twere ridiculous to think so, since he requir'd a Cohabitation of two Years, and therefore necessarily supposed the Figure to be compleat. Now,

if notwithstanding this Figure was compleat, he would have the Husband shew himself a Man, it follows, that he repord no Trust in the Figure. And what that Proof of Manhood was which he required, may be more eafily guess'd at than ex-

prefs'd.

If in the next Place we confult the Decretals, which are properly our Laws in this Matter, we shall find there's not a Word about visiting the Husband, nor confequently about his Conformation. Nay, the very Glosses fay nothing of it; and the Author of the Memorial, who would infinuate that they do speak thereof, cannot find the least Warrant to bear him out in his Idea. Thus the Laws and Conflitutions of the Church have made so little Account of a Man's Conformation, that they did not for much as think the Judge ought to cake any Notice of it. I will not fay, that later Times did unwifely in taking Cognizance of it; but this still slews, that it was not natural to fearch in Man for the Proof of his Ability, since the Legislators of the Church fearch'd not for it there.

The ancientest Canonist, (as 'tis believ'd) that has spoken of visiting the Man, is Hostiensis. But how does he speak of it? These are his Words, in Som. Tit. de Frig. n. 13. Et ideo Juden debet diligenter inquirere must a colomo od or summe od frutrum

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Man that talks thus, is doubtlefs very far from thinking that bare Conformation is fusicient.

Another Canonist, Prapositus, cited by Tagareau, P. 109, expresses the Cases wherein the triennial Cohabitation takes Place; and to give it Place, he desires that the Husband should (when visited) shew that Token of Virility and Potency, which did not appear in the Marquis de Gesures: Tune (says he) babet locum Cobabitatio triennalis, quando nullam apparet Impotentia signum, ut quando vir babet lanceam rectam Eaptam.

If to keep himself from being suspected of Impotency, a Man must be seen in that State which this Canonist so naturally describes, it follows, that not being in that State is a signum Impotentia; and then, if inanimate Conformation is a Sign of any Thing, it is of Impotency rather than

Potency.

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\* They who have read Tagareau know, that he makes the chief and most essential

<sup>\*</sup> P. 25. We shall therefore hold to it, that, to declare a Man potent, he must have Motion, &c. P. 39. The Difficulty is the greater, when the Man is without any apparent Defect, & frigide movetur & arrigit, (observe, he supposes in this Man some Mition; and yet because he the same Time supposes this Motion to be weak and slight,

Mark of a Husband to consist not in bare Conformation, but in an animated Conformation. All his Passages are plain and explicite; we shall produce some of them, but shall change here and there his Terms, because they were too broad.

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flight, he puts him in the Class of Impotents) which is a kind of occult Frigidity, from which however something will appear in Visitation, provoking to Motion. (This shews the Practice of Provocation was before to Day.) P. 44. But if the Man is found without Default, having on the contrary all the Tokens of Virility, and Motion likewife, which may be discover'd in visiting him, he is not impotent. (Motion therefore has been look'd for in risiting a Man, and bare Conformation was never acquiesc'd in.) P. 91. This you muft read in the Original; for it is fo very fmutty, it would foul the cleanest Language it could be wrapt up in. P. 102. ( |peaking of one who is suppos'd fit for none but a Widow) Something may be perceived in visiting him, and observing whether he can move; it being certain, that he who has Motion fufficient ad copulam, without any other Defect, is potent. (Therefore no Body can be adjudy'd potent, if that Motion appears not in him.) P. 109 and 110. Hostienfis fays, there are Men qui tarde moventur & arrigunt, and that the Judge in hujus modi causis debet inquirere diligenter urum Vir movestur ad Coitum, thereby knowing whether he's potent or not; (it is therefore by Motion, and not simple Conformation, that Potency or Impotency is discover'd by.) P. 3. It will be enough to say, that Motion sufficient ad copulam, being an infallible Sign of Potency in a Man who has no other vifible Defeit, all lawful Endeavours ought to be us'd to discover, (out of the Congress) utrum Viri moveantur ad copulam & arrigerent, because thereby their Potency or Impotency may be known. See again the Original p. 118 and 204.

of Impotency in the last Age, and who propos'd to himself the same Object with Tagareau, that is, to procure the Repeal of the

Let the Physicians and Surgeons who shall visit the Man, be enjoin'd (the Author in this Place is instructing the Judges how to conduct themselves) to observe whether he has all the apparent Tokens of Manhood, whether any Thing be wanting in him; also whether he can move or not, Motion being an infallible Token of Potency in him who has no visible Defect, let People say what they will. The Duty then of Searchers, is to judge of Man not by Conformation, but Motion.

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† Horman, p. 11. Every Man ought undoubtedly to be reckon'd an Impotent, cujus pudendum non potest arrigere, but it is hard to know whether that's sufficient and whether a Man shall be judg'd potent, ex eo quod habet hujusmodi organum plenum, nervosum, erigibile, & mensura communi non destitutum. (This Author Speaks like our Searchers; he doubts whether Motion be enough, but he does not doubt whether Conformation be injufficient.) P. 18. We therefore hold it for certain, that Motion is not enough to cause a Man to be declar'd potent, but there's something more requir'd. (If Motion is not enough, can Conformation without Motion Suffice?) P. 23. The common Signs of Potency are a Voice not small nor womanish, a Wit not dull nor heavy, and the Hair too must grow out naturally as in others .-But the greatest Sign of all, is Motion, the most conclufire, the most necessary, and that which surmounts all others. P. 27. Holding for an affir'd Maxim, that he is capable of Marriage who has Motion. (So that to judge whether a Man is capable of Marriage, we must examine whether he's capable of Motion; and that being so, then Inanimate Conformation is not Jufficient.) P. 32. A Man can't be separated, the' his Wife's a Virgin, dum modo

præcipuum

the Congress: This Hotman follows exactly the same Principles, as will appear by the underwritten Quotations

These two Authors have indeed spoken of Impotency like Canonists; but have they who have spoken of it like Physicians, held o-

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præcipuum organum fit integrum & tenfum. The fecond Confideration which ought to be had in visiting the Man, is to pray the Judge to direct the Phylicians and Surgeons how they are to form their Report, - &c .- Aid if they find that there has been no Excision, nor any Privation of the Organs, (that is, if the Conformation be entire) they may, by some Method which their Art may suggeft to them, fee, utrum in præcipno organo fit aliquid roris, & arrigat. And twas for this Reason that me faid in the Replication, that the Searchers had Secrets for discovering whether the Man they visit is capable of Motion. (The Author of the Memorial, who is fcandalized at this Propesition, ought to have known, that the Advecate of Madam de Gesvres only spoke after Hotman, one of the greatest Scholars of his Time.) P. 48. The Husband who is able to make his Potency appear, is not oblight to make any other Proof, than that actually rem habuers cum Uxore. (Observe, according to this Author, the Husband who goes about to hinder his Wife from being ex amin'd whether the's a Virgin, is oblig'd to prove that he is potent. Thus when he refuses to make out his Potency he ought to fuffer his Wife to be inspected ) P. 85. Such a Man (he's Speaking of a Man charg'd with Impotency) must not flatter himself, and think to avoid Process, be cause he has a good Aspect; for if the Physicians do not fee in his Person great Arguments of Potency, and if the Wife is found to be a Virgin upon Report of Matrony the Marriage ought to be declar'd null; and those Atguments of Potency, ought not only to be in insurrection ne ograni, but they must also see the Disposition of Br dy, &c.

Mademoifelle de MASCRANNY. 283 ther Principles? Shall I here repeat that Expression of Zachias, which so formally condemns Conformation, Membri optime confirmati flacciditas? Shall I likewife recal a general Maxim which is in a Report of Searchers, handed down to us in the 14th Decision of the Rota? The Husband who gave Occasion to this Report, was form'd just as the Marquis de Gefores is; and therefore the Visitation which was had upon his Person, was follow'd by just such a Report as ours, Medici retulerunt se in eo reperisse partes genitales naturaliter bene dispositos, ideòque difficile, imò impossibile esfe, ex sola partium veneri dicatarum inspectione, potentià vel impotentià Viri judicium ferre.

All the other Reports which have been cited for Madam de Gesvres, either in the Plea, or in the Replication, have follow'd this same Principle; and it was for the Inability of compleat Conformation, that the Officials unty'd the Marriage-Knots of Jacob, Hubineau, Cabu, Legros, Mercier,

Verdun, and others.

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So that when the Author of the Memorial offers us Conformation as a fure Warrant of Potency, he at the same Time tells us, that those Sentences, which were all, except one, subsequent to the Repeal of the Congress, are so many sacrilegious Impertinencies. And indeed there's not so much as one of 'em that does not deem as

convicted of Impotency, Husbands whose Conformation was exact, nay, Men who gave fuch Appearances of Virility, as the

Marquis de Gesvres could not give.

This is not all; the Author of the Memorial must go farther, and tell us, that since the Discovery of his Princi-ple, the Art of the Searchers is no longer necessary in Questions of Impotency; for every Body fees, that if the Inspection of a Man is for no other End, but to be inform'd as to Number and Dimensions, there's no Person but may be a Searcher.

And so we may say to the Searchers of our Time, what Tagareau said to those of his, who abstain'd from judging of the Potency of a conform'd Man, and who fulpended their Judgments 'till the Congress; Tour Science is not great, if you can't judge of Impotency, unless there's an apparent Privati on, or a Want of Organs. Any Person can

Stick we therefore to the Rule. Never was any Man that was accus'd of Impo tency, declar'd a true Huffand, upon the Credit of Conformation; conform'd Men, as well as others, have been forc'd to part with their Wives upon the Exploration which they have subjected their own Persons to, or which their Wives have undergone.

do as much as that.

Nay, some of them, such as the Sieurs Verdun and Jacob, upon both one and t'other

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Proof; Hubineau and Mercier were declard impotent upon visiting their Wives; Cabu and Legros, upon the bad Success of the Attempts which they made upon themselves, or which the Searchers made for them.

After this, who will not wonder at the Author of the Memorial, when he observes that the Wives of Cabn and Legros were not inspected? Has he then forgot the Petition of Cabu's Wife transcrib'd into the Book of the Sieur de Combes, where 'tis visible, that the Conformation of that Hulband was put to the Test? Has he likewise lost the Remembrance of what he has read in the Journal du Palais, where the Journalist says, that Legros was founded the same Way? If the Marquis de Gesures is willing to abide by that Touch-stone, if he will come into the same Trial, Madam de Gesvres is not against it. But, at the same Time that he refuses to have his Person try'd any Way, and declares that reiterated Trials would be in vain; for him to hinder the Truth from being fought for in the Person of Madam de Gesures, is what has no Precedent or Example. And those he shelters himfelf with, do conclude nothing in his Favour. But to judge thereof, we must hear what he fays we of to a from Didt

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The Physicians, says he, and the Chirurgions of greatest Note, who have made Inspections and Reports in this Officialty, since the Repeal of

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the Congress, have plainly given to understand in their Reports, that fince the forefaid Repeal they had no longer any other Tokens to examine, or other Proofs to look for, than good or bad Conformation. Some of those Sage Searchers bave been su pertuous as to declare in their Reports, that fince the Condemnation of the Congress it was the only Thing they could lawfully examine. Others of them, without repeating the Same Reason, have given Marks of the Same Submission to that Ordinance, ly confining themfelves in their Reports to the Sole Examen of good or bad Conformation. Upon this lingle Proof, without carrying their Curiafity farther, they have determin'd whether a Man was impotent or not. And 'tis Seen by many Precedents, that the Officials did not require other Proofs to pronounce their Decision. . . . . In none of the Reports or Judgments, do we find either the Searchers proposing to inspect the Wives, or the Officials ordering it. 19131 1111

We here folemnly declare in the Face of the Publick, that we will give up the Cause, if in any of the Reports which the Author cites in this Place, can be found those Words which the Memorial fcts down in an Italick Letter, Since the Condemnation of the Congress, Conformation is the on-By Thing that is lawful to examine. We Speak with Confidence, because we are fure

of the Truth.

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The Words which the Author transcribes, relate to a Report made in 1675, before the Abolition of the Congress. Therefore if it were true, that the fage Searchers had talk'd the Language which the Author attributes to them; if they had said, that since the Condemnation of the Congress they were Judges of nothing but Conformation, they had been either Impostors, in allowing the Congress to have been already condemn'd when it was not, or Enthusiasts, who by a rapturous Fit could have

foreseen what was to happen.

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But then what does their Discourse amount to? Even this, and no more. After they had found a good and laudable Con-formation in the Perfon whom they examine, they declare that it was not lawful for them now, that is to fay, before the Act of the Congress, to judge from any other Tokens whether the Party was potent or impotent. And this Word now has a Relation to the Custom observ'd by Tagarean. For that Author remarks, that during the Time that the Congress was in Force, the Searchers acquitted themselves very lightly in their visiting of the Man, in whom they hardly examin'd any Thing more but Conformation, presupposing that the Congress which was to follow would make it sufficiently apparent, whether that Conformation was capable of making good what it N 2 feem'd

feem'd to promise. Now, let any one judge what Confidence ought to be repos'd in the Quotations of the Memorial. Whether it be Mistake or Negligence, it is certain there is fcarce any one of them but is perverted by some Alteration, or some other Sort of Abuse.

If we were to take the Author of the Memorial's Word for't, we should believe, that the other Searchers whom he speaks of did look upon the Decree which repeal'd the Congress, as a Law which limited their Attention to the fole Examination of Conformation. And yet there is nothing in their Reports, which gives any Colcur for ascribing this Thought to them, nor can they be supposed capable thereof, without Supposing at the same Time, that they had as much Wit as the Author of the Memorial. A Thing which will not eafily be believ'd.

This is true and certain, viz. that the Conformations for which those Searchers did decide, were either in a Condition or Difposition which promis'd Potency. If they have render'd no Account thereof in their Reports, it is because they did not think it became them to defile the faid Reports with a Detail equally offensive and superfluous. Why superfluous? Because it was their Opinion which the Judge demands of them, and not the Methods which they

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made Use of to arrive at the Knowledge of that Truth which they render an Account of; Methods which they may take, without being authorized thereto by the Judges express Order; just as a Master Mason, nominated to give his Opinion of the Foundation of a House, is not obliged to have in the Sentence which nominates him, an express Permission to open the Earth, and to lay bare the Foundation, the Solidity

whereof he is to certify.

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It is therefore true to fay, that these Reports which they make so much Noise about, do conclude nothing. But we may fay more; they would conclude nothing. tho it were certain that Conformation alone, without other Circumstances, had weigh d with the Searchers. For one Man's Conformation, is not another Man's. There are forme Conformations which can of themselves remove all Suspicion of Impotency; and this depends upon the Quality of the Perfort whom the Searcher examines. And as it would be ridiculous to argue from one Man to another, the Author of the Memorial cannot lawfully prove the Potency of the Marquis de Gesvres by such Reports of Visiters, wherein he had nothing to do. This shews, that the wisest Courfe on these Occasions, is, to leave Things to the Prudence and the Conscience of the Searchers. This likewife thews, N 3 that

that it is rash to tell them that they ought to follow one Rule more than another; for this is properly taking upon us to be Judges of the Rules of Art. Which argues an mexculable Prefumption in Perfons who can know but very little of the

Let us carry this Argument farther, and with one more Consideration shut up this Dinertation, which indeed does not feem to be very necessary, fince it degenerates into a Criticilin of the Art. Were it true what the Author of the Memorial pretends, that Conformation had decided in the Cases of the fix Reports which he mentions we must have look'd for the Cause of it no where but in the Impossibility of getting an Infight into the Hufband's Impotency, by vulting the Wives. We have already observ'd in the Replication, and have thewn by the Interrogatories of those Wives, that not one of them pretended herfelf a Virgin. And it was for this Reason, (common to all of them alike) why neither the Searchers propos d, northe Judge order'd any of them to be visited. But because that Proof has not been made Use of upon five or six Occasions, where it could not be apply d, does it follow, that in this Affair, wherein it offers it felf a decisive and canonical Proof, it is the Judge's Duty to reject it?

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And because those Wives, who were spoken of in those Reports, have been either so foolish as to have suffer'd the Loss of, or so unfortunate, as not to have preserv'd their Virginity, must Madam de Gesores be uncapable to prove her's, and so lose the Fruit of her Vertue.

Let us leave here the Reports, and return to the Rules which the Church teaches

us by its Constitutions.

So little did the value Conformation, her Laws and Regulations don't fo much as speak of it. Nay, we farther say, the was fo very distrustful of Conformation, that all the Rules and Proofs the could think of in Cases of Impotency, had no other Aims but to enable her Ministers to avoid being impos'd upon by Conformation. Therefore when the Advocate of the other Side gives us Conformation for a Proof, tis the fame Thing as turning the Question it self into a Proof; or, to render this Thought more perceptible by an Example, 'tis the fame Thing as if one who is accus'd of having counterfeited a Deed, should argue from the Authority of that very Deed which the Plaintiff Says is forg'd.

The Plaintiff, or, which is the same Thing, the Party who undertakes to prove a Deed salse, would talk to the Defendant thus: You would have your Deed be admitted in Evidence, because there's the

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Names.

Names of two Notaries to it: But first make it appear, that those Notaries did write with their own Hand the Names and Flourishes which are to that Deed; or elie, if you cannot make appear that all this is true, let me shew that it is all false and counterfeit; and 'till I do fo, let the Credit of your Instrument remain in Suspence, and do not make Use of it against me. And exactly thus does Madam de Gesvres talk to the Marquis. Your Configuration is impeach'd of Fallity; I alledge it to be a Fistion and a Cheat: If I'm caft, Ill be bound to forfeit all I'm worth in the World : Such a Penalty is heavy enough to give Weight to my Accusation, and to make it be prefum'd to be wellgrounded. Do you therefore begin, and yield up your Person in order to verify this Matter; or, if you mean to with-bold from me this Proof which resides in your Person, let me demonstrate by my own Perfen bew just and bow well-grounded my Accusation is. But 'till then, do not insist upon making this Configuration (which I object against) to serve as a Proof; this Configution, I lay, the Fidelity or Infidelity whereof is disputed between us.

I much doubt, whether the Author of the Memorial can get off of this Argument. He may call it Subtilty and Sophistry; (for that's his Way of bringing himself off when he finds himself hard put to it) but affur'd I am, he will never find any essen-

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Mademoiselle de Maschanny. 273 tial Difference between his Pretension and that of the Plaintiff we have been speaking of

We have feen him spread forth fix Examples, and apply them to a clean contrary Meaning, in order to introduce into the World an Error of which he is the Father and Inventor. Now, let us fee the Ornaments which he bestows on this Error to cover the Desormity of it. His Words are these.

The Conformation of any Person is such a Proof as is founded in the very Order of Nature. A Child is born with all the Parts of a well organized Body. Nature who animates all those Parts, destines them to the several Functions that are Juitable to them; and all the fe Parts so born together, do likewise undergo together their Increase and Decrease; in Touth they grow up together, in Manhood they are at a stand together, in old Age they wear away together; it cannot therefore be thought, without affronting the Wisdom of Nature, that having form'd all these living Parts, at the same Time, with Proportion, Confiftence, and Difposition, necessary for their several appointed Offices; I say, it cannot be thought but that she, at the same Time, has given to all of them the Sustenance and Strength requisite for their ful-filling the Ends and Purposes to which she has allotted them.

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I dare fay, no Body will accuse us of picking out the least shiring Part of the Memorial. And yet what do we see in all this? An Orator playing the Wanton, a Rhetorician drawing Pictures to amule his Fancy. To prove this, is it not plain, that the Quintessence of all these Phrases amounts to no more than this Proposition, viz. that all who are of Opinion that Conformation is insufficient in Questions of Impotency, blaspheme against the Wisdom

of Nature?

Thus the Author of the Memorial will have it, that the Wisdom of the Church is nothing, nor that of the Canons any Thing. There's nothing in the Canons but Contradiction, in the Rules of the Church Instability, in the Proofs Uncertainty, in her Discipline nothing but Impurity and Complaisance for the Frailties of the Sex. But as for Nature, there it is that the supreme and perfect Wisdom resides. Not but that Nature goes often out of the right Way, not but she sometimes gives Eyes to the Blind and to the Deaf Ears, which notwithftanding the seeming Regularity of their Conformation, are of no manner of Use to Not but that there are fallacious Conformations; and even among a hun-dred Impotents whose Marriage has been diffolv'd, we may fay there were at least ninety of them exactly conform'd; but the religious

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religious Respect which we owe to the Wisdom of Nature, obliges us to be silent, and say nothing of her Mistakes, and to overlook her Errors as if they had never been.

This is the Sum Total of the Author of the Memorial's Rhetorick; and according to that, he speaks no longer like a worldly-wise. Man, who laying to Heart only the Indisfolubility of Marriage, the Effects whereof he feels, never troubles himself whether or no its Sanctity, which he has no Sense of, be prophan'd by an Impotent. He speaks like a Sage of China, like a Disciple of Confucius, who ascribes every Thing to Nature.

Let us again look into his Memorial, and fee, whether there is any other Principle to authorize this fundamental Proposition of his, that Conformation is all in all. We find therein two Principles, one physical, and the other moral. Let us examine them

in Order. a said

When he is angry with our Searchers for not deciding in Favour of the Marquis's Configuration, he asks them, why they question the Effects, when they had seen the Cause? As much as to say, according to his new Philosophy, Conformation is to the marital Power, what the Cause is to the Effect.

But who does not with half an Eye see, that if the Conformation of a Man is an Ingredient among the Causes of his Potency, it is only as an organick and inftrumental Cause? And who does not at the same Time know, that the instrumental Cause is properly nothing at all? The instrumental Cause, quatenus instrumental, is a dead Cause, and stands in need of a first Mover, without which it cannot act; and it is in this first Mover, in this primitive Agent, where the real Cause, the Causa efficients resides.

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Will the Author of the Memorial dare to tell us, that Conformation is the efficient Cause of Potency? We are not out of Hopes that he will go that Length; for when he found in the Replication of Madam de Geswres, that what renders a Man potent is an internal Principle, he made a Jest of this internal Principle, he would tain have it pass

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This makes us believe, that he has taken a Resolution to transport the Seat of Concupiscence, the Seat of what is call'd in Theology fomes peccati, the Seat of that Sting of Death which we inherit from Adam, that he has, I say, resolv'd to transfer it from the Inside of Man to the out; so that we shall shortly be told, that the primum Mobile of the virile Power resides not in the Blood and Humours, not in a certain Mixture of Qualities which are contrary, but which however agree in producing, as the Poet says, Discors Concordia Fatibus

Fatibus apta eft, to conclude not in any inward Principle, but only in the outward Conformation. The Author's Courage will undoubtedly carry him thus far; but let him not think, that we will confute him by Books, we will give him no other Book

to ftudy but his own Perfon. well was

If therefore to place the efficient Cause of Potency in Conformation, is to contradict Nature; if such Conformation no more contributes to render a Man potent, than organically and instrumentally, just as the Pencil contributes to the Draught of the Picture, it is evident, that we can no more argue from Conformation to Potency, than from a Pencil to a Picture. And how ridiculous would a Man be, if he should say, here is a Pencil, therefore here is a Picture? It would be just as unreasonable to say, here is Conformation, therefore here is Potency.

This were right, if Conformation were the efficient Cause of Potency; but as it is no more than the organick Cause of it, and as that organick Cause stands in need of a superior Cause to put it in Action, which superior Cause is independent of the Organ it employs, it is evident, that the Author's Cavil against the Judgment of the Searchers is unjustifiable; and he ought not to have said to them, since you see the Cause, why do you question the Effect? As

if Man's Potency was the Effect of Conward Principle, but only in the notamon

Thus is his physical Principle demolish'd, and brought to nothing, let us proceed to his moral Principle, and fee how he ex-

preffes it of on mid sying

Every Man, says he, is reputed potent in like Manner as every Man is reputed sound of Body, if the contrary does not appear by some reat, vifible, and manifest Defect, because, presumitur in qualibet causa, id quod tre quenter accidere solet; and as the Gloss Says, (upon Chapter Si quis) vix invenitur impotens ad cocundem. It is upon bim, who is the Accuser, to prove his Accusation, not by Conjectures, but, as the last Law in Cod. de probat fays, apertissimis Documentis vel indicis indubitatis & luce clarioribus, you accuse me of Impotency contrary to the Presumption both of Law and Nature; it therefore lies upon you to prove it; and you cannot do it, but by some real and evident Default in my Confor-Be efficient Caule of Potency : Dut. noitem

And here we don't dispute the first Proposition of the Author's Argument. We grant, that every conform'd Man is naturally presum'd potent, in like Manner 28 every authentick Writing, bearing the Character of a publick Hand, is naturally of Weight and Credit. But we maintain, that as the Credit of fuch Act or Writing is eclips'd, or, at least, is suspended, so

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foon as any Body undertakes to prove it is forg'd, fo, in like Manner, the general Prefumption refulting from Conformation vanishes before an Accusation of Impotency; and the Reason thereof is very natural, because such a Presumption being no more than a loofe Induction from the common Course of Nature, it is just that it fliould give Way to an Accufation of Impotency, which is peculiar to a fix'd and certain Subject, such as is the Husband whom the Wife accuses. 'I is for the same Reason, that the Presumption which renders an Act authentick before it is tax'd with Forgery, lofes all its Weight fo foon as the Accufaclarion as thefe learns ab mrof ai noit

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Every authentick Act is prefum'd to be true and faithful fo long as the contrary is not undertaken to be provid; but as this is only a Presumption founded upon the general Order of publick Polity, and is therefore indefinite and general, it ceases fo foon as there is an Impeachment of Falshood against that particular Act. For as the particular is more home and preffing than the general, it is just that the one prevail above the other. When any Person undertakes to prove an Instrument to be forg'd, and fuch his Accusation is juridically receiv'd, the Accuser is to prove the Forgery; so likewife we grant it lies upon us to prove the Impotency. But do

we refuse to prove it? Far from it; all we do, all we fay, is only in order to bring us to our Proof; as on the Part of the Marquis de Gefores, all that they fay, and all that they do, tends only to impede that same Proof. So that by a Cross-grainedness, which always go along with a bad Cause, at the same Time that they say to us prove, they do all they can to take from

us the Means of proving of a folder

The Question after this falls upon the Quality of the Proof which we ought to produce. They require from us evident Demonstrations apertissima decumenta, Tokens more clear than the Sun, indicia luce clariora; but as these Terms are very indefinite, and as every Term is an inexhauftible Source of Ambiguities and wrong Ap plications, there's a Necessity for the Author to explain himself, he must let us know what he means by these indubitable Proofs, these Tokens clearer than the Sun; but having already treated of the Certainty or Uncertainty of Proofs in Point of Impotency, I shall refer thither, and only add a Word to conclude the Parallel, which we have begun between Accusations of Forgery and Accusations of Impotency.

Let us suppose the Person that is accused of Forgery makes Use of the same Argu ment which the Author of the Memorial offers against us; let us fancy we hear him

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im Cay fay to his Accuser, Every Man is presum'd to be an honest Man, 'till the contrary is prov'd by some Crime, real, visible, manifest, because presumitur in qualibet causa id quod frequenter accidere solet, that on the other Side Guilt is never presum'd according to the Theory which the Doctors have deduc'd from the Law, \* Merito ff pro Soc. that in short the Crime of Forgery is still less to be prefum'd than any other, according to another Theory founded upon the Law cum precibus, in Code de probat. It therefore lies upon the Accuser to prove his Accusation, not by Conjectures, as the last Law under the same Title Says, but by most evident Convictions apertissimis documentis, or by Tokens clearer han the Sun, aut indicis hice clarioribus. Now, the Proof by Comparison of Handwriting, which is the only one you can make Use of against me, is so far from being an evident Conviction, so far from being a Token clearer than the Sun, that if we do it Justice, we must put it upon the same Level with Conjectures; nay, with fuch Conjectures as are most to be suspected: of Error. Witness the Experiment that was made of it in Justinian's Time, of which that Emperor has given us an Account in his Novella 73. Witness likewise trees, whereas in the Oak obline

<sup>\*</sup> Theory is a School-Term, and signifies a very gene-

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all that the Doctors have said of it. It therefore follows, that you are without Proof when you have none that's real, evident, or manifest; and if you say, that there's no rescinding the Proof by Comparison of Hand-writing, without letting the Crime of Forgery go unpunish'd, I answer, that since you are necessitated to chuse one of the two Evils, either to lot Guilt pass with Impunity, or to punish Innocence, its much better to run the Risque of the former than the latter.

Does not our Adversary perceive his own Picture in this Reasoning? If therefore it is evident, that this whole Structure of Argumentation, which we have just now put into the Mouth of one accusd of Forgery, would not at all hinder the Proof of the Forgery by comparing of Hand-writings; can this same Argumentation, when transferr'd into an Acculation of Impotency, hinder the Proof of the Hulband's Impotency, by visiting the Wife. Is there not in both Cases the same Ratiocination, the fame Principle, the fame Consequence? Or if there is any Difference, does it not confil in this namely, that in the Case of Forgery the whole Proof depends upon the Speculation of Searchers, and confequently upon a certain Number of very hazardous Conjectures, whereas in the Case of Impotency the Proof is double? For it is deriv'd as

Mademoiselle de MASCRANNY. 283 much from the Husband's Person as the Wise's, it being certain, that that Husband who shuns to make the marital Truth speak for him, renders to his Wise a Testimony of her Virginity, even more unexceptionable, than the Testimony which the Matrons give in her Behalf.

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We therefore fay, that the Author of the Memorial is, to the last Degree, unfair in his Argument; he would have us prove Imotency apertissimis Documentis, but what loes he mean by apertissima Documenta by hele evident Proofs? We maintain, and he Proposition is not questionable, that the uridical Proofs are as strong as those evilent Convictions he requires; and as Forgery is evidently prov'd, when it is prov'd by a Comparison of Hand-writing, because uch a Comparison is a juridical Proof, so ikewife is the Impotency of a Hufband vidently prov'd, when the Wife's Virginity is prov'd by Visitation, because such Visitation is a canonical and juridical Proof of both together. Canonical, because a Proof by the Canons; jurilical, because admitted nto the Ufage and Practice of the Courts; nd thus the Judge's Conscience may rely pon it even tho' it were true, which it is

ain and dangerous.

And this is an Answer to those Words of the Canon, oculus & manus obstetricum sape falluntur.

ot, that the Proof were in it felf uncer-

falluntur, the Matrons (fay they) are subject to be deceiv'd. Suppose it be so, where is the Searcher (expertus) that is not sometimes mistaken? If you want such as are infallible, you must look for them out of the human Creation, And therefore the Remedy which the Doctors and Glosses have found out against the Mistakes of the Matrons, was not by faying they would have no more Matrons or Searchers, but that they ought to chuse out Matrons of consummate Experience, and able Searchers, debent adhiberi peritissima; and the Danger is not great in France, where to the Matrons they join Physicians and Chirurgions more vers'd than Matrons in the Rules of the Art. But supposing, that the Eye and the Hand of the Matrons may likewise happen to err under the Direction of Physick and Chirurgery, does it follow, that the Possibility of erring ought to deprive us of a Proof which is an only Proof? If this be so, what will become of us There's no more to be done, than to that up all the Courts of Justice, since, in short, there's no Proof, be it what it will, but Error may creep into it by some Chink.

Let us therefore say, as the 27th Decision of the Rota says upon a Question of the same Kind as is now before us. That learned Company, after they had order d (in an Affair of Impotency) the Wife to be vi-

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Mademoiselle de MASCRANNY. 285 fited, started this Objection to themselves; but the Visitation of the Wife, said they, is a Sort of Proof, which the Canons distrust even at the same Time that they propose to make Use of it. May be so, answers the Rota; but this is the only Means we have to judge of the Wife's Virginity, and of a Marriage's Confummation, non obstabat quod cum probatto per inspectionem st fallax & lubrica, non potest ex ea duci certum argumentum, quia cum in bac materia non posit dar i alia probatio quando una de conjugibus stat pro matrimonio, alius contra ma-trimonium, ideo per boc genus probationis controver sia dirimenda est. How different is this Maxim from the Principles taught by the Author of the Memorial! According to him, we must not only abolish the Visitation of the Wife, but likewife all the other Proofs of Impotency as casual and uncertain; nay, we must lay hold of this Opportunity to exterminate the Custom of Complaints of Impotency, and to purge the Church of these Defilements. According to the Rota, we must preserve both the Practice of visiting the Wife, and that of all other Proofs of Impotency, because they could not be rejected without fifling all the Complaints of Impotency; tho' were it not for these Complaints, the Prophanation of a Sacrament would be remediless. Thus do Men differently reason, according to the

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Spirit with which they are animated. we follow the worldly Spirit, no more Complaints of Impotency, no longer any Proofs, no longer vifiting the Wife. If we follow the Spirit of the Church, the Church must judge of Impotency, and consequent ly must preserve the Use of such Proofs which alone can put the Matter in a Way of Iffue. According to the worldly Spirit, inspecting the Wife is a shameful scanda lous Proof, fit for nothing but to put Mo desty to Confusion; and the Modesty is but an empty Name, when we speak of a Wo man's lying-in, or of curing any Diftem per, or the like; yet when the Point in Dispute is concerning a Husband's Impotency, it is a Prostitution, (for the Marquis de Gesures's Advecate has gone even so far it is, I say, an infamous Prostitution but for a Moment to offend that Modelty, which upon other Occasions (infinitely less important) they make so little Account of.

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On the contrary, according to the Spirit of the Church, Modesty is truly to be respected, and all Occasions wherein it may pessibly be offended ought to be avoided; but if without committing Violence upon it, there's no preserving the Sanctity of a Sacrament, nor putting a Stop to the prophane Abuse which an Impotent makes of it, it is just that it should give Way to Necessity.

cessity. And in such a Case, the Church can extract from the Shame that goes along with the Inspection, (which is certainly an Evil) she can, I say, extract from that Evil a Remedy for Sacrilege, and consequently a Good of an infinite Value, in much what the same Manner as the divine Wissom can from Concupiscence, the Source of all Evils, extract so great a Good as is the Sanctity of Marriage: Fecit enim, says St. Austin, de libidinis malo, nuptiarium benum.

Such is the Difference between these two Spirits; and this Contrariety which is observed between the one and the other upon the pretended Turpitude of the Inspection, is likewise observed upon its pre-

tended Uncertainty and or medical

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The World cries out; nothing is more uncertain than the Consequences which are deduc'd from the Inspection. The Church answers, Experience does not inform me, that those Consequences are so uncertain; and I commonly find that the Wife is a Vingin, when the Husband refuses to undergo a Tryal. These two Things, a Husband who withdraws his Person from Enquiries, and a Wife who seems to the Matrons to be a Virgin, produce much the same Essect, as if the Church, for Instance, should find in a Field a Figure of a Landmark accompany'd with two Pieces of a Stone,

Stone, and by putting the two Picces to gether, they appear to have been formerly one and the lame Stone, she would not scruple to say, this is a Land-mark. In like Manner, when I see on the one Sidea Husband who hides himself, and on the other a Wife who says, I am a Virgin and will be judg'd by the Searchers; when I find these two Fragments, I compare them together, and I observe that they so perfectly tally with each other, that those two are no more than one and the same Body of Proof. After which, I no longer scruple to say, here is Impotency.

Now, if after this I am deceived, which is not very likely, so much the worse for them that deceive me; but its better for me to be exposed to the Danger of being deceived, than to leave remediless the Prophanation of a Sacrament. Perhaps this Danger of Prophanation does not weight much with you worldly Men, but that's because you have no Conception what it

is to prophane a Sacrament.

But let us draw to a Conclusion; since we only undertook to handle the general Thesis; and since, if we were to descend to the Examen of the Author's Remarks upon the Interrogatories and Reports, we should find too vast a Field, and too great a Crop of just Objections, it would be almost impossible for us not to push too

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Home the Advantages which the Author gives us. But besides that all sensible People will know how to detect the little Arts and Subtilties: which he makes Use of to infuse a Belief that there's a Contradiction in our Argument: we hope to fully to confute and refel all these vain Appearances and idle Phantoms in Court at the Hearing, that perhaps the Author shall have but fmall Cause to rejoice or to triumph. Let us therefore leave all these frivolous Imaginations, and only examine one Place of the Memorial, which because of the Importance we cannot let pass without Reflection.

The Marquis de Gesvres is as sensible as a young Man of his Age ought to be, of the Tokens and Sallies of Nature, venit injusta Venus; he neither fears how often, nor how nicely he is inspected. But let us suppose, that in the first Visitation, in a Second, in a third, a young Man of the best Constitution in the World, in his Bed-Chamber, News is brought him of the coming of four grisly old Fellows, more likely to check the desir'd Token, (that Donative of Fancy and Nature) than to promote it; Suppose, I say, that this young Man should not be so fortunate as to find Favour in the Eyes of these Searchers, or that they themselves do not find Favour in his, what Conclusion can any

one draw from thence?

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A Man, without being extremely sharp? fighted, may see what the Author of the Memorial would infinuate to us; he talks (and in all Probability knowingly too) of the Condition of the Marquis de Gesores: He declares to us, that let us reiterate our Inspection never so often upon him, it will have no other Event than the Vifitation already pass'd; not but that the Marquis de Gesores is, according to him, capable of the Ebullitions fo familiar to Persons of his Age; but because the Searchers who shall visit him, will be always old grifly Fellows.

We are willing to believe, that in this Discourse the Author has only a Mind to be merry; but be that as it will, is it not plain, that the Marquis de Gesvres confesses thereby he is impotent? Is it not evident, that he has intrusted this Secret to his Advocate, who, out of Principle, now reveals it to the whole World? For that's the Sense the whole World has put upon his Memorial. The Moment that it was publish'd, there was not a Man that doubted of the Marquis's Impotency; and thus already we have got one Part of the Land-Mark; we only want the other, and that will be found by the Inspection which I contend for.

But fay they on the other Side, to what Purpose should we inspect the Marquis so often? There are but two Motions, the

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Mademoifelle de MASCRANNY. 291 natural, and the provok'd; now the first cannot be in the Presence of the old grilly Searchers, and the second is a Sin. We leave to the Publick the first Proposition of this Argument; but as for the second, we will take upon us to fay, that the Marquis's Squeamishness of Conscience is a Sort of a Prodigy. Will he be more scrupulous than Hostiensis, Cardinal of the holy Roman Church, and sometime an Official? Does not that great Man say, the Judge ought to examine, or rather recommend to the Searchers to examine, whether or no the Husband accus'd of Impotency is capable of those Sallies which the Marquis boasts of, utrum vir moveatur ad coitum? Will he be more rigid than Prapofitus, out of whom the Passage before quoted shews, that that was the Practice of his Time, and that he did not in the least disapprove of it? Will he in short be more religious than all the Officials of France, who allow the Searchers to make Use of the Exploration mention'd in those two Canonists? A Truth which is prov'd both by the Process of Cahu, and by that of le Grosse, and by those of the Sieurs Jacob and Verdin. We don't in-deed find, that the Impotency of Hubineau and that of Mercier, were grounded upon this Probation; but then it was in no very different Manner, for both their Wives were inspected; and 'tis observable, that

all these Examples, except that of the Sieur Jacob, are posterior to the Abolition of the

Congress.

To prove that it is the Practice, Madam de Gesures's Advocate appeal'd to publick Notoriety; and as every publick Notoriety is a Point of Fact, this, methinks, thould exclude all Manner of Reasoning; we shall however make Use of one Argument, by Way of Reasoning, which shall evince the Certainty of that

publick Notoriety.

A thousand and a thousand Men have been judg'd proper for Widows, who have not been found to be fo for Virgins. The Registers of the Offices are full of these Sort of Examples. Now I ask the Author of the Memorial, what's the Ground of this Distinction, between the Necessarium for a Virgin, and the Sufficiens for a Widow; I fay, why this Distinction, unless it be for the Reason Soto has given in these Words? Non Sufficit si arrigat vir, sed & opus est eum ita arrigere ut virginem deflorare posit, si contraxit cum virgin'. The Degree therefore is what they judge by; the more or the less; if therefore the Degree is seen, why may not we see the Thing of which the Degree is only an Accident? How can we judge of the Comparative, unless we fee the Politive? It is therefore clear, that this Positive is seen, and always was seen; which

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which being so, the Marquis de Gesvres is scrupulous without a Cause, when he tells

us, that the provok'd Motion is a Sin.

But we leave him to his Scruple, fince there is no curing him of it, (for there is no Scruple so incurable as that which is singgested by a Desire of Self-desence) and we shall only ask him, whether for a Perfon of his Rank and Reputation there is an absolute Impossibility to put the Searchers in a Way of observing an innocent and natural Motion.

In an Affair wherein not his Fortune is concern'd, (for here his Fortune goes for nothing, whatever his Advocate faid to the contrary in Court) but in an Affair, I say, which touches his Honour, which is the most valuable Thing belonging to Men of Quality: In such an Affair, I say, and in fuch a Town as Paris, can there be any Want of Expedients to a young Lord who is able to buy them, cost what they will? Tis not for us to feek out Expedients, or to tell him where they are to be found; and fince he does not feek them himfelf. tis plain what his Reasons are. Heretofore a Man was deem'd impotent, when he refus'd the Congress, we need only follow the same Presumption, and deem him an Impotent, who shews himself so fearful of a new Visitation.

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But we have faid more than we needed for baffling fuch strange Principles as those which the Memorial lays down in general. If any Thing remain'd to be done with Respect to the Publick, it would be to vindicate Madam de Gesvres from an Imputation of four Lies, which the Author charges her with, no less bluntly than malicioully; but she has already clear'd herfelf from the first, by her Note upon the second Article of her Interrogatory. And as that Note appear'd before the Memorial, the Justification may be faid to be beforehand with the Accusation. As for the other three Lies, the Publick will eafily fee, that the Author transforms them into Lies, by little Witticisms and fruitless Declamations. Nor could it be otherwise expected, but that after he had throughout his whole Book made what he pleas'd to be True, he should, at the End of it, make what he pleas'd to be a Lie. And here we might return the abusive Language, which the Author uses against Madam de Gesvres in that Memorial; but he has done her so much Service in unveiling the Impotency of the Marquis de Gesvres, that it would be Ingratitude in her not to pardon his base Reflexions.

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## RECAPITULATION,

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Of the two Systems

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Monf. and Mdm. de Gesores.

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Having been more prolix than we at first design'd to be, we thought that the Work requir'd a Recapitulation, exhibiting the Connexion of the sundamental Principle with its Consequences, as well as the Connexion of all the Consequences among themselves, as likewise tracing back the first Principle of the Author of the Memorial, in order to demonstrate the Absurdity

dity of it, and thereby to destroy the whole

System.

The fundamental Principle of Madam de Gefores, is, that the Marriage of an Impotent cannot be a Sacrament, because every Sacrament being a visible Sign of some invisible Mystery; and that of Marriage being destin'd to signify, by the Capacity of the Unity of the Flesh and the Identification of two Persons, one of which is the Head, and the other the Body; and the Sacrament of Marriage (I fay) being deftin'd to fignify by fuch Identification the coelestial Unity of Jesus Christ as Head, and the Church as a Body, subordinate to that Head; this Representation is impossible to be fulfill'd by a Person incapable of uniting himself in the same Flesh with his Wife, and fo to become her Head.

From this Principle, which is incontestible in Theology, the first Consequence that arises, is this: That the Marriage of an Impotent not being possible to be a Sacrament, it is, for that Reason, a Prophanation of a Sacrament; nay, a Prophanation so much the more facrilegious, as it serves both for an Occasion and a Veil to a continu'd Progress of Sin and Impurity abomi-

nable to Nature's felf.

From thence arises another Consequence, namely, that the Church never could refuse, nor ever did refuse the Assistance of

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Mademoiselle de MASCRANNY. 297
her Authority to the Wife of an Impotent,
whenever she besought her to deliver her
from so terrible and so sad a Condition.
Now if upon such Occasions she has sometimes exhorted the marry'd Couple to Continence and a fraternal Life, it never was
but when they both freely consented there-

N. B. The Differtation that follows, and is contain'd between the two Crochets, was design'd for another Place; but the Author thinking it would interrupt the Course of his Argument in that Place, thought fit to transplant it hither.

Here it is to be observ'd, that when the Author so positively assures us, that the Church in former Ages never us'd to give any other Answer to Complaints of Impotency, than quam non babere ut uxorem; babeas ut forerem; and when to confirm his Proposition, he cites the Chapter Quod sedem, which is made by Alexander III. and the Chapter Consultationi, by Lucius III. he makes a wrong Use of those two Popes Decisions. For hesides that all the Texts where fuch a Resolution is found, ought to be explain'd by Chapter Laudabilem, which supposes mutual Consent, si ambo consentiant: Besides, I say, this Reason, which is insurmountable, because of the Necessity there is to understand

understand the Canons of the Church in a Sense that may reconcile them, it is farther to be observ'd, that it is certain, that Alexander III's Answer to the Bishop of Amiens, from whence the Decretal Quod fedem was taken, had a Retrospection to the ancient Usage of the Church of Rome, who was wont to fay to the marry'd Couple, when either of them was incapable, live like Brother and Sifter. It is likewise certain, that this Usage is attested by some Antiquities, and by two or three Decisions of fome Popes preferv'd to us by the ancient Collections of the Decretals. But in the first Place, none of those old Monuments mention that Usage any otherwise than as a particular Cuftom founded upon no Law or Canon of the Church, Confuetudo Romana Etclesia: 'Tis a consecrated Phrase, a Phrase which is continually made Use of, and never is chang'd; which shews, that that Ufage was appropriated to the Church of Rome consider d as a particular Church. But what afterwards happen'd, demonstrates it beyond Dispute. Gregory IX. having undertaken to compose a Code for the universal Church, and in Order thereto to collect together the Decisions of his Predecessors, which were scatter'd up and down in Books, either imperfect or not authentick; Gregory IX. I fay, in Pursuance of this Defign, took care to exclude from

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from this Code, as well all those Decretals, as the Fragments and Portions of them, that could give any Occasion to believe, that the universal Church meant to espouse that particular Usage of the Church of Rome. There was, for Example, in the first or second Collection, a Decision of Clement III, which seem'd to say, that in no Case, no, not for Impotency, the Wife might be separated from her Husband, and this, upon the Foundation of that Usage of Rome. \* Gregory IX. took Care not to introduce this Decretal into his Compilation. And the Reason was, because he found it was contrary to the Discipline of the

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<sup>\*</sup> Originally the Decretals of the Popes were no more than Answers upon particular Cases; and then, whatever Respect they claim, they are fill no Laws of the Church. They never are fuch, but when they are offer'd as Laws; and when afterwards the Church accepts them for Laws, by admitting them into Practice: Thus, properly speaking, tis the Church's Acceptation which gives to a Law the last Seal of its Authority. This Principle is so universally known, and has been fo well established by M. de Marca, that no Body questions it, at least in France. Therefore all those ancient Answers of the Popes, which feem'd to approve of the particular Usage of the Church of Rome, and which recommended fraternal Cohabitation in Case of Impotency; all those Answers, I say, were never the Church's Laws, either because the Popes never offer'd them to the Church for general and universal Laws, or because the universal Church never accepted them, or admitted them into Practice, as appears from the Example of the Church of France, which every Body agrees did never conform therewith.

the universal Church; the same likewise may be faid of the Decretal quod sedem. That Decretal, in its Preamble, gave an Account of the Usage peculiar to the Church of Rome, and did it in these Words: Verum licet Ecclesia Romana non consueverit propter naturalem frigiditatem, nec propter alia maleficia legitime conjunctos dividere, &c. But it concluded with a Decision contrary to this same Usage; for this is the Resolution which Alexander III. gave upon it, Sicut puer qui non potest reddere debitum, non est aptus conjugio, sic quoq; qui impotentes sunt minime apti ad contrabenda Matrimonia reputantur. What does Gregory. IX do, when he was minded to give a Law to the Universal Church, and make a Code for her? He cuts out all the Preamble which spoke of the Usage of Rome, and which seem'd to approve of it. Of the whole Body of Alexander's Decretal, he retains no more than the Decision above transcrib'd; and by inferting it in his Code, he proposes it as a Rule to the universal Church, who accepts and embraces it. Pray, why this picking and culling, why this cutting off, unless it were to give us to understand, that the particular Usage of Rome being contrary to that of the universal Church, nothing ought to be left in the new Code that might erect it into a general Law. And indeed Gregory IX's Compilation was no founer

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Mademoiselle de Mascranny. 301 sooner publish'd, but the Church of Rome herself departed from her particular Usage, and conform'd herself to the whole Body of the Church, which is the Occasion why, since that Time, we find no Answer of any Pope ordering or advising fraternal Cohabitation in Case of Impotency.

What does the Author of the Memorial do after this? He goes and takes this Fragment of a Preamble, which was rejected by Gregory, this proscrib'd, condemn'd Scrap, he goes, I say, and endeavours to make of it a general Law of the Church, giving Monsieur Pithou his most humble Thanks for preserving to him that Monument, tho', by the Way, he is not beholden to Monsieur Pithou for't, but to the ancient Collections of the Decretals, which never had any Authority in the Church, and which were never look'd upon as any Thing else but Collections of Curiosities.

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no ier Now, if after this we are ask'd why Gregory IX. gave a Place in his Compilation to the Decretal of Pope Lucius, which begins with the Word Consultationi; if any Body wants to know why that Decretal which retrospects to the ancient Usage of Rome, was not likewise left out of the new Code, the Answer shall be fetch'd from the Decretal it self; and in order to understand this Answer, you must know, that

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the Chapter Consultationi is in the Case of a Man who had marry'd a Woman who was ill-fram'd for the conjugal Purpofes, but whom he had marry'd, the' he knew of her Imperfection; which is inferr'd from these Words of the Text, licet incredibile videatur quod aliquis cum talibus contrabat matrimonium. This Circumstance has given the Canonists Occasion to believe, that Gregory IX. admitted this Decretal into his Compilation, on Purpose to introduce that Rule, which the Summary at this Day makes of it, contrabens scientur cum impotenti ad copulam, ab ea non separetur. And upon this Foundation, see what a Meaning Innocent IV. puts upon that Explication; Innocent, I fay, who liv'd in the Time of Gregory IX, and was his Creature; Innocent, who labour'd upon Gregory's Compilation immediately after it was publish'd, and who, in short, was almost his immediate Successor in the Pontificate: See, I fay, how this great Canonist, this great Pope, interprets the Decretal Consultationi; behold for what Purpose, and for what Doctrine it was put into the Code of Gregory IX. He supposes, that in Reality it obliges the Husband of the incapable Wife to live like a Brother with her, according to those Words of the Text, Romana tamen Ecclesia, in consimilibus consuevit judicare, ut quas tanquam uxores babere non possunt, babeant

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beant ut forones; but then, in his Opinion. this does not hinder the Husband from taking another Wife during the Life-time of the former. Why does it not hinder him? Because it is not incompatible for the same Man to be Husband to one Wife and Brother to another; as the Hufband of the one he may converse conjugally with her, and as Brother to the other he performs towards her all the Offices of a Brother, that is to fay, he may affift her in her Necessities, and fupply her with Food and Rayment, being oblig'd in Reason so to do, since he knew before the Marriage his Wife's perfonal Defect, which render'd his Marriage void. And it is this Interpretation of Innocent IV, which has stirr'd up in the Schools the Question which is so frequent among the Canonists, utrum maritus ob impotentiam uxoris separatus teneatur alere uxorem.

We have no Reason to believe, that the Author of the Memorial understood better than Innocent IV. the End and Object which Gregory IX. propos'd to himself, when in his Compilation he inserted the Decretal Consultationi. Surely so celebrated a Canonist as Innocentius, a Canonist who was Contemporary with and Successor to Gregory IX, could give a better Account than any Body else of that Pope's Intention. The Author therefore turns aside the Decretal of Pope Lucius

Lucius from the Object for which the Church propos'd it to the Faithful. She only propos'd it to them by Way of Instruction, and to let them know that a Husband who rejects an incapable Wife to marry another, owes a brotherly Tenderness and Commiferation to that rejected Wife, when he knew of her Imperfections before he marry'd her; and yet if our Author is to be believ'd, the Intention of the Church was to teach us, that a Husband not impotent was to continue expos'd to the Dangers of a fatal Cohabitation; and that to give it the Name of a fraternal Life, was enough to fanctify it, the' the Fraternalship was perish'd, or at least was perpetually in Danger of perishing. And thus by sollowing his own fingle Sense, and disdaining to be guided by the Canonists, he has made the Texts to fignify even what he thought fit.]

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From the Necessity of the Church's judging of Complaints of Impotency, there arifes another Necessity, namely that of having Proofs; and this is productive of another, which is to have fuch Proofs as are of a moral Certainty, fince it is impossible to have either a physical Certainty, which Nature denies, or a demonstrative Certainty, which human Wit cannot attain to in Disputes about Facts, and especially occult This Facts.

This is the whole System of Madam de Geswes, and it is manifestly a very plain, very natural, and a well-deduc'd System; but it's chief Merit consists in its Conformity to the Principles and Practice of the Church.

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All that is urg'd against this Practice alls upon the Church, and not upon the Cause of Madam de Gesures. But the Blows that are levell'd at it, are no less contrary to Reason than disrespectful to the Church. The Inspection of the Wise, is a Proof that has been made Use of in all Ages and in all Countries; a Proof sounded upon Experience, which informs us, that the Condition of Virgins is different from that of other Women; and consequently a Proof whose Credit cannot be dubious, because some Speculators have thought fit to reckon it so; for Speculation is of no Force against Experience.

And in the main, even they who deny the Solidity of this Proof do only dispute its physical Certainty, which is the only one that is taken Notice of in Medicine; but none of them all dispute its moral Certainty, which falls within the Cogni-

zance of the Tribunals.

And it is to no Purpose to say, that thereby the Indissolubility of a Sacrament seems exposed to some Danger; for that Danger is no more than what happens to accused.

Innocence;

Innocence. And as it would be ridiculor to fet afide all Accufations for fecret Crime for Fear Innocence should suffer, it weren less a Madness to banish all Complaints Impotency, merely because the Indissolu bility of a Sacrament may fuffer thereby

As for the Sake of the publick & curity, the Courts of Judicature do m scruple to indanger Innocence; so likewil for the Sake of the Holiness of a & crament, they make no Scruple to of pose the Indissolubility of it. And to on clude, since we are forc'd to make Choice of one of the two Evils equally terrible either to diffolve the Sacrament, or to ove look the Prophanation of it, Reason wi have us determine on that Side where there Proof, tho' not demonstrative, against the for which there is no Proof, neither de monstrative nor of any other Kind.

According to this Tage OEconomy, the Church has given Sanction to certain Proofs the strongest and most efficacious amon petrowhich, is That we offer; not only the more ear efficacious, but the most ancient and the y'd most canonical; since it has on its Side the y'd Authority of two Decretals, purposely mad Coha for the Case of Impotence; and in short ore has the Advantage of deriving its Certain two ty, not only from the Person of the Wise save but likewise from the Husband's refusing to sary shew that he is fit to be a Husband of the which

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The Use of this Proof was not destroy'd with the Congress; neither the Terms of Langey's Decree, nor any Parity of Reason an countenance this whimfical Proposition, that the Abolition of the Congress cary'd along with it the Abolition of the infpection of the Wife, and of the other & Proofs of the Church; and the Examples subsequent to the Abolition of the Congress, plainly shew, that it is equally conrary to publick Notoriety and to Reaon.

The Inconveniences of the Visitation of-will er'd and demanded by us, are imaginary; the tis no more fallacious, than many other the asual Proofs so commonly made Use of in The Inconveniences of the Visitation ofde Courts of Judicature; 'tis at least certain, hat if it be casual, none would be harm'd they it but the Wife, and the Husband of would run no Risk at all in it; for if it on be true, what they fay, that a Virgin may not bear about her the Appearances of a marth y'd Woman, at least it is certain that a marthe y'd Woman cannot, after a certain conjugal Cohabitation, be like a Virgin. If therertifore its Certainty may be exceptionable, ain t would only be so when it declares in rary Case, and when it decides in Favour of the Wife, its Certainty is at least moral.

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ral. You may see the Foundation of the Opinion in Zachias; but the the Certain ty is not equal on both Sides, it is Sufficient for authorizing the Judge to order the Proof so, that it may present it self of that Side where it is morally certain, a experimentally so.

To conclude, fince Practice, improving upon the Canons, has added the Inspection of the Man to that of the Woman, and Accusation of Impotency has been try and made an End of, but by the Probation of the Man, or the Condition of the

Woman.

Hubineau, and so many other Impotents who have been freed from their Mamage-Bonds since the Congress, leave no Room for disputing upon this Head. It is likewise what Hotman taught, when he said, that the Husband ought to she was a Husband, or suffer his Wife to make

herself out to be a Virgin.

Thus falls to the Ground that false Principle newly coin'd to serve the Cause of Monsieur de Gesvres, viz. That the Appearance of a Husband makes the Husband A Principle contrary to all the Notion that have been hitherto form'd concerning Impotency; contrary to the Principles of the Canons; contrary to the Document which have been left us by all who have handled the Subject of Impotency, whe the

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er Phylicians or Canonists; contrary to xperience, which teaches us that above ree fourths of the Tribe of Impotents e regularly conform'd; contrary, in short, Reason, which teaches us that Conforation, when accus'd of Impotency, canot, tho' entire and regular, prove Potenin like Manner as the most compleat egularity in the outward Form of a writin Instrument, concludes nothing for the ruth and Sincerity of the Instrument, fo on as ever the Falsity of it is offer'd to e made appear; or at least so soon as the idge has admitted of such an Offer to ake the Falsity appear; contrary to the lements of the most popular, the most niverfal, and the least contested Physicks, no It hich tell us, that the Conformation of a Ian contributes not to the Power of a Ian, any otherwise than as the organical nake and instrumental Cause, utterly unable to It without the Influence of an efficient rin ause, the Principle whereof is wanting e a all who are touch'd with Frigidity; Ap ontrary likewise to the Rules of Logick, which teach us that the Argument from onformation to Petency, is a Consequence ning rawn à causa instrumentali ad effectum; and onsequently the most enormous Fallaent y that human Wit is capable of. To have onclude all in a Word, contrary to the gewho et al Impression which all Men have, who the

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are apt to believe, that a Conformation which fears the Beard or grifly Faces of the Searchers, is so little a Sign of Potency, that, on the contrary, 'tis the surest Sign of Impotency: And therefore when this Sign is in the Husband, and at the same Time the Signs of Virginity are in the Wife, we may say, that then it is no longer guesling at Impotency, 'tis seeing it.

This is an Epitome of Madam de Geforeis Argument, against which the Marquis de Gesvres sets up a System altogether new; a System concerted upon the Exigencies of his Person; a System, in short, founded principally upon that Error which was never before heard of, namely, that what raises Marriage to the Dignity of a Sacrament, what makes it to be the mystical Sign of Jesus Christ's Union with the Church, is purely and folely the Indiffolubility of the Bond; a Principle so strange and unccountable, that if the Author could have foreseen the Consequences of it, he would have shiver'd with Horror at it. For it would follow, that the Marriage of the Greeks, Schismaticks or not Schismaticks, would not be a Sacrament, fince Adultery dissolves it. The Marriage, even of the Orthodox, would not become a Sa-crament without Confummation, fince before Consummation it may be dissolv'd by a Vow

Vow of Religion: In short, the Marrie of an Impotent would be a true and
wful Sacrament, since setting aside the
stency or Impotency, nothing would hinr its Bond from being indissoluble. And,
this Means, the Church, which has put
End to the Marriage of so many Imponts, is guilty of an infinite Number of

crilegious Ruptures.

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This is certainly the Reason why cur uthor forbore to prosecute his Principle in e Residue of his Memorial. Thus we ay compare this rare Production of his it to a Child that is dropt in the Streets, d who is abandon'd by his Father the ry Moment when it begins to fee the ght; and this is what made the Author n into the Allegations of the Decretals, hich he turns and winds all manner of ays according to the Necessities of his use, without troubling himself whether no the Perspicuity of their Expressions ves the Lie to the false Interpretations puts upon them. Witness his Construon of Chapter Proposuisti.

But because, notwithstanding all his bility, he finds it impossible for him to ake out, that the Decisions of the Church on his Side, he is resolved to set up to a Censurer of them; for this Reason, says there is nothing in the Canons but attradiction, Irresoluteness, Impurity. And

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tho' Alexander III. was a very great Man he makes no Scruple to affault his Mem ry, fancying that the greatest Names mu lose their Lustre whenever he pleases

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breathe upon them.

Again, because all this is not enough do his Business, he is resolv'd, by fa Means or foul, to make of Langey's Decre a Law that shall deprive the Church of the Use of all her Proofs; and therefore hatches this amazing Paradox, that no Ma can be judg'd an Impotent, but upon sud Proofs as may make Incredulity it felf of dulous, that is to fay, upon fuch Proofs the whole Creation cannot furnish; from whence it would follow, that as often as the Church has diffolv'd Marriages upon the Foundation of Impotency, fince the Ageo St. Gregory to this present Time, so often ha she been guilty of a Rashness mix'd with Impiety; which I shiver to write.

For in short, if to judge of Impotent we must necessarily produce Proofs super rior to all Kind of Doubt, just or unjust and if the Proofs of this Kind are be yond the Power of human Wit, clear, that the Church, who never ye could meet with fuch in order to the unty ing the Marriage-knot, could not, with out sacrilegious Temerity, pronounce a those Sentences of Dissolutions which sh has pronounc'd 'till this present Time.

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To shut up the Discourse. If we run thro the whole System of the Author, (tho' I think it can hardly be call'd a System) we shall find nothing in it but Contempt and Irreverence towards the Church; nothing but a perpetual censuring of her Discipline, and a presumptuous cavilling at her Maxims and Usages. Thus may Madam de Gesures justly say, that her Cause is so essentially link'd to that of the Church, it is impossible one should fall without the other.

M. BEGON, Advocate. BENARD, Proctor.



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Second



## Madam de Gesvres,

Against

# The Marquis de Gesvres,

Concerning the Interrogatories of the Parties, and the Searchers Reports.

Gentlemen.

THEN I first consider'd with my felf how it came about, that Questions of Impotency being naturally flort and simple, this present Suit should yet be so tedious and perplex'd, I confess I was almost ready to impute the Fault to my felf;

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felf; but the true Reason of it is this: I saw the Marquis's Advocates making great Inroads into Antiquity; I saw them combating the Discipline of the Church, carping at her Canons, altering her Doctrines; my Duty was to have left them to themselves, and to have let them wander'd on in their mistaken Paths wherein they had lost themselves: Instead of that, I ran after them without minding that I lost my Way with them.

If any Thing may serve me for an Excuse, it is the Concern I have for a Cause which is yet more moving on Account of

its Justice, than for its Importance.

Let us say nothing at present of its Justice, because that's the Thing in Dispute: But as for its Importance, how could I see a young Person of Condition, Merit, Virtue; a Person undoubtedly worthy of a better Fate? How (I say) could I see her expos'd, not to the Danger of living again under the Lash of an impotent Husband, (for Death would soon deliver her from that great Unhappiness) but to the Danger of losing that last poor Remains of an expiring Life, which her Instrinities, sed by her Missortunes, have left her?

Certainly a Man must be well acquainted with the inward Sentiments of an Advocate, to judge how uneasy, how allarm'd he must be, when he is intrusted with a

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Cause whose Object is so touching. At that Time he is afraid of every Thing; a Shadow, a Phantom makes him start, and his Zeal leaves him without that discerning Faculty which he should have to distinguish what Objects he ought to fight against, and what he ought to despise.

Having by a printed Writing (I hope) dispers'd all those Illusions which seem'd prepar'd only to frighten me, I come to the true Gitt of the Cause; I mean the Examination of the Interrogatories, and the

Reports of the Searchers.

As to the Interrogatories, I confess they contain nothing but Things charg'd by one Side, and deny'd by the other, and confe-

quently nothing decifive.

The only Use that the Judge's Wisdom can make of them in this Cause, is to compare those of the Husband with those of the Wife, and fo by that Parallel to judge of the Sincerity of the one, and the Fraudulency of the other; but this depending more upon the Impression which you your selves, Gentlemen, shall receive from reading them, than upon any Reflexions we can make to you, we believ'd it our Duty to leave this Criticism to your own great Wifdom and Discretion.

Cne Observation we can't help making, because it serves to clear our Searchers from the groundless Aspersions which have been

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been thrown on them, and not a little contributes to illustrate the Œconomy of their

Reports.

Madam de Gesvres has caus'd to be notify'd to the Marquis two Sorts of Articles, upon which he has been as often interrogated; one on the 23d, another on the 26th of April. The Articles which compose the Substance of the Interrogatories, are reducible to one and the same Point, viz. Non-Consummation of Marriage; and this Non-Confummation is prov'd by the Privation of the motive Faculty, which is charg'd in Articles XV, XVII, XXIV, and XXVII, of the first Interrogatory, and III, IV, V of the second. It is likewise to be observ'd, that in one of these latter, the Privation of the elaftick Power is likewise charg'd; upon which this is the Reflexion that the Cause naturally admits of.

de Geswes could aver, with a positive Assu-

<sup>\*</sup> The Marquis de Gesvres's Advocates have been so child sh as to plead, that Madam de Gesvres having laid her Action for Impotency, it could not be understood of Frigidity, but only a real and visible Impotency; but don't they know, that the Word Impotency is a generical Term, which takes in all Incapacities of a Husband, from whatever Cause they proceed? Do they not likewise know, that in the Petition the Wife charges only Impotency in general, and in the Facta sets forth the Species of it as well as she can from her own Experience.

rance, confifted in the Description of the Condition of a Hulband, whose Infirmity the was but too well acquainted with. It was this Description alone that the could speak knowingly of; but it was not postible for her to dive into the Cause of it. There was a dead Palfy in the Person of the Marquis de Gesvres. This was all she was capable of knowing; but that this Palfy was a natural or an accidental Miffortune, fhe could not certainly learn by any Means what foever.

Where any Doubt arises, the Presumption is for natural Impotency, for Frigidity. And thus it is Frigidity that the first Articles do ascribe the Marquis's Impotency to. But scarce were these first Articles notify'd, when Madam de Gesvres is inform'd, that the dead Palfy might be caus'd by some Plaisters apply'd by a Quack: Upon this fhe

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The Petition of Madam de Gesvres runs thus: It is however true, that the Marriage is unconfummated thro' the Marques de Gefores's Impotency, which was known to the Duke de Tresmes, and of which your Petitioner has been but too well convinc'd by indubitable Tokens and Facts. This fews that we have Reafon to fay, that Madam de Gesvres neither did nor could judge of her Husband's Impotency, but by its Effects, referring to the Searchers to judge of the Cause when they visited the Husband; and surely if to impute the Marquis's Impotency to Frig dity, is to forget the Import of the Petition, it is to forget one's Dictionary, not to remember that Impotency is the Genus, and Frigidity the Species.

the causes fresh Articles to be notify'd. wherein she alledges a Withering of the Organs, a shrinking, a drying up of the Nerves, caus'd by the Plaisters; and thereby the fets forth alternately two Sorts of Impotency: The one natural, residing in the Blood, and therefore latent; the other accidental, residing in the Exterior of the Organs, and confequently apparent. fay, that these two Impotencies are alternately let forth; for it were ridiculous to imagine, that Madam de Gesvres meant to charge them cumulatively. Thus flood the Business, when the Sentence of the 30th of April was obtain'd, by which the Official appointed Searchers to visit the Marquis: Which Sentence of Nomination prescribes to them the Lesson they were to follow, points out to them the Object they were to purfue, and trac'd out the Path by which they were to arrive at it. Give me leave, Gentlemen, to repeat the Terms of this Sentence.

To find out whether the Defendant is importent or not; to draw up this Report from the Condition of the Said Impotency, upon the Facts and Articles notify'd at the Request of the Plaintiff upon which the Defendant has been interrogated.

This Order consists of three Parts: One shews the Searchers the Butt they are to aim at: To find out whether the Marquis

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be impotent or not; this is to be their Obrect.

The other wills them to apply themfelves to penetrate into the Condition of his Impotency; that is to fay, as I suppose, the Nature and Quality thereof, whether accidental or natural; whether caus'd by

Frigidity or Plaisters.

The third Points out to them the Tokens and Footsteps by which they they were to investigate the Impotency. Follow, says the Sentence to them, the Traces which you will find mark'd in the Complainant's Articles; confront them with her Hufband's Person, and see whether they are confonant to the Condition you shall find him in.

After this Analysis of the Sentence, let us take to Pieces our Searchers Reports; let us see whether they have fulfill'd what the Sentence requir'd of them; let us begin with the Reports of the Sieurs Gayant and Marechal, who were nominated by the Marquis de Gesvres.

We have found in the faid Marquis de Gelvres, that the exterior Parts, ferving for Gemeration, are of the requisite Figure and Size; but these Conditions not being Sufficient to judge of the Consummation of Marriage, there being Occasion for two Faculties, the Motive and Elastick, we cannot absolutely determine, whe-

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an and Mademoiselle de Mascranny. 321 ther or no he is able to perform the Duties of Marriage.

There are three Parts in this Report, which correspond with the three Parts of the Sentence, the rang'd in a different Or-

der from that of the Sentence.

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In order to fatisfy the first Part of the Sentence, which order'd the Searchers to apply themselves to find out whether the Marquis was impotent or not, they tell you, Gentlemen, that they could not absolutely determine whether be was able to perform the Marriage-Duties. Pray observe; the Resolution, or rather the Irrefolution of this Report, falls not upon the Fact of Confummation or Non-confummation, but upon the personal Capacity or Incapacity; not upon the Act, but the Power; not upon the Exercife, but the Faculty. For the Searchers don't fay; we cannot absolutely determine whether or no the Marquis has consummated his Marriage, but whether he is able to perform the Duties of his Marriage. And thereby they testify, that as the Sentence order'd them to bend themselves to discover Potency or Impotency, fo was it to the Enquiry of Potency or Impotency, that they confin'd their whole Attention.

In Obedience to the second Part of the said Sentence, which enjoin'd them to give an Account of the Condition of the Impotency, and to find out whether it was caus'd either

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by natural Frigidity, or by the drying up and shriveling of the Organs, thro' Means of aftringent Plaisters, they tell you, that they found no Fault or Defect in the exterior Parts serving for Generation; whereby they give you to understand, that the Impotency, if there is any, not appearing outwardly, must remain within, in the Quality of the Blood, and in the Habit of Body. Laftly, to fulfil the Intention of the third Part of your Judgment, and to trace the Impotency by such Tokens and Footsteps as Madam de Gesvres had mark'd out in her Articles, they declare to you, that they cannot judge of the Confummation of the Marriage by a motionlets Organization; because such Organization is ineffectual without two Principles, one of which is necessary for imparting Life to it, and the other for communicating to it Fecundity, (and when I speak of Fecundity, I do not mean actual Fecundity, but habitual and potential Fecundity.)

Now neither of these two Principles appearing in the Marquis's Person, the Searchers certify to you, that they could not supply them, tho' perhaps they might have supply'd the second had they met with the first; but finding neither the one nor the other, they could not supply any

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#### Mademoiselle de MASCRANNY. 323;

I would fain know why in this Place: they meddle with the Confummation, and the two Principles, unless it were literally and fcrupuloufly to obey your Sentence? Being oblig'd to judge of Potency or Impotency, by the Tokens fet down in my Articles, they confult those Articles. In examining them, they find therein but one fingle Sign of Impotency, which runs throughout the whole from the Beginning to the End; and this Sign is Failure of Confirmmation; they therefore must speak of Confummation. They, at the same Time, find this Failure, or rather this Negation of Confummation prov'd by the Absence of the two Principles. This brings them under a Necessity of explaining themselves concerning the Absence of those two Principles, and of grounding their Doubts upon not having feen either the one or the other; not but that the Presence of the one might have made the other be prefum'd; but the Absence of both of them suffer'd neither of them to be presum'd.

Hereby we fully clear them from the Reproach that's cast upon them of carrying their Enquiry up to the actual Fact of Confummation, and to the Investigation of the

two Principles.

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upon the Confummation or the Non-confummation as a Light-house, or as a Path which was chalk'd out to them by the Articles, in order to arrive at a Knowledge of the Capacity or Incapacity of the Person they were examining. It is a Stepping-stone which they met with in the Structure of my Articles; a Stepping-stone upon which they steppid, not to rest there, but to mount higher, and so to climb up to the Discovery of natural and habitual Impo-

tency.

And this appears by two irrefragable Reflections: One is, that they do not found the Truth or the Falfity of Confummation any otherwise than by the Presence or Abfence of the two Principles, the Existence whereof causes Potency, and the Privation thereof Impotency; so that they judge of the Act no otherwise than by Possibility, and confequently by the Potency. The other is, that towards the End of the Report they indeed intimate, that if they meddle with Confummation and the two Principles, it was not to judge whether the Marquis had actually confummated, and then to ftop there: it was to judge whether he could and can again confirmmate. Therefore the Suspension of Judgment with which they conclude their Argument, falls not upon the Question, whether there has been Confummation, but whether the Marquis

Mademoiselle de Mascranny. 325 Marquis de Gesvres is able to personn the

Duties of Marriage; that is to fay, whe-

ther there is a Capacity in him.

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Now let us come to the other Report, which the conceived in Terms different from the former, follows much the same Method, and observes the same Order of Investigation.

The Report of the Sieurs Hequet and Chevalier.

We have observ'd, that all the Parts of the Marquis de Gesvres are of a fitting Consistence, Figure, Number, and Largeness, for performing the matrimonial Duties: But because all these Conditions are not sufficient for establishing Virility and his Potency, without the Tokens of Erection, which we saw nothing of; we are of Opinion, that towards deciding whether be is capable of the matrimonial Duties, there should appear in him some Tokens of Motion; and because those very Tokens of Motion would not be of Force enough to ascertain the Consummation of Marriage, we are of Opinion, that it would be proper to visit the Body of Madam de Mascranny, Spouse of the said Marquis de Gesvres.

Every Word of this Report may be faid to be drawn with an exquisite Prudence, and that the Report in it self is a Master-

piece of Art, and done Workman-like.

In

In order to fatisfy the former Part of the Sentence, which deputes the Searchers to examine the Potency or Impotency, they don't at first, Gentlemen, speak to you of any Thing but Virility, Potency, Capacity. But because all these Conditions are not Sufficient for establishing Virility and his Potency, &c. we are of Cpinion that that towards deciding whether he is capable of performing the matrimonial Duties, &c. Therefore it is the natural Capacity, the Potency, the marital Faculty, that they take upon themselves to judge of, and not of the Act or the Exercise of that Faculty.

To perform the second Part of their Commission, and to inform the Official concerning the Quality of the Impotency; and to clear up the Doubt whether it was natural or accidental, Nature's Error, or Viril the Blunder of a Quack, Coldness of the Blood, or Siccation of the Organs, they tell you, like the other Searchers, that hysic they don't fee any thing amifs in the exterior Surface; and thereby they give you to understand, that the Impotency, if there be any, must be occasion'd by an Irregue by th larity of Nature or some inward Defect.

Lastly, to satisfy the third Part of the Sentence, which injoin'd them to judge of the Impotency by the Signs and Footfteps which I had fcor'd out in my Arti-

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Mademoiselle de MASCRANNY. 327

les, they talk to you of Consummation; ecause Non-confummation was the sole Token of Impotency, which I had charg'd; ind because in charging Non-consummaion, I did at the fame Time charge the Want or Privation of the two Principles. hey again look out for Impotency by that ndication. Tent somenty mo

And that is the Reason why they do not peak of Confummation 'till after they had mention'd the Absence of Motion, that is ofay, the Absence of the grand Principle; Principle which is never to be fupply'd when it is not apparent, tho' its Presence, when it is apparent, may serve to supply

hat which may not be shewn.

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Give me leave after this, Gentlemen, to mfold to you in two Words the Œconomy f this Report. It first of all considers or Virility and Potency in abstracto, so far he orth as it may be separated from the Exercise or the Act, so far forth as it is a metahysical Being; and then it considers it in te-mcreto, so far forth as it acts physically, to far forth as it is put in Exercise, and by ere is Exercise gives Assurance of its Existence. by this 'tis visible that their Search after otency was the only Object the Reports the mopos'd to themselves.

dy les, they talk to won of Confundation: A farther Justification of the Searchers, are

Another Reproach is cast upon them are which is, that you, Gentlemen, deputed hat them only to examine Fact, that is, who will ther Nature had competently organiz'd the An From whence they conclude no that the Organization appearing to them am to be competent, it was none of their Bus-ness to dive into the Sufficiency or Insufficiency ciency; and that fuch Sufficiency or In-Buil fufficiency was a Question not of Fact bu Pro Law, which the Official reserved to him alt felf.

But what Answer shall we give to this wretched Quibble? Is the Cause of Monsieur de Gesvres of such Moment, that the greatest Men must thus lay aside and de leat throne that found Reason which so justly has L won them the Admiration of the Publick? teny Is it possible for fuch acute, such clear at fighted Wits not to perceive, that if Sufficient ciency or Insufficiency of Organization is not a Question of Law, a Question within the when Jurisdiction of an Official, there will not in its longer be any Question of Art?

Will they make it a Question of Art Man whether one and two make three, and whe ly 'the there the Measure of the Subject that is expodu amin'd be squar'd from the Standard instituted by Nature? A pleasant Art this yet a

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Mademoiselle de MASCRANNY. 329 which will afford as many Mafters as there

re Men upon Earth.

It is therefore plain, that the Searchers em Art is no otherwise necessary to the Judge, the han for discovering the Sufficiency or Inthe inficiency of each particular Conformation. the and furely, to make of this Sufficiency or ide insufficiency a Question of Law, is the me Thing as to say, that a Mason judges Question of Law, when he declares that Foundation of two Foot cannot bear a labeleding of 15 Toises. Tis loading the but rosession of the long Robe with all the impaltry Business of the Mechanicks; 'tis oiling it with all the Ordures of Medi-the ine and Surgery, as if she had not in her on elf Riches enough to keep her from envy-the ng the Arts or the Sciences which are be-de eath her.

has Let us therefore fay, and let no Man ck? teny it, that our Searchers had a Right to ear out off the Difficulty, whether Conformaofficient or not sufficient. Let it is not be said that they decided unwisely, the when they determined for Insufficiency; no or it is a Point demonstrated in my prined Answers, that the outward Figure of a art Man never made a Man; and consequenthe y 'tis a Point which I am no longer oblig'd

ex to dwell upon.

There is one Observation, which I may is yet add, that the more the Searchers talk

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of the advantageous Configuration of ther Marquis, the more Room they give us tests. believe it vicious and naughty: But be Wh cause this Reflection may offend chaft of Readers, I shall put it into Latin.

Certum est, & virorum omnium experi nfi mento constat id esse discriminis inter viros mam, trimonii capaces, & frigidos, quod in illi membrum virile tamdiu contractum sit, qua din non erigitur : adeo ut non possit dijudica cujus longitudinis & crassities sit membrum illu nisi erectum & rigidum appareat. In frigidi sicut & in cadaveribus virorum vita carentim contra usu venit. Frigidi namque babent qui dem virile membrum, sed nunquam contractum femper longum & crassum quale babent cate viri, dum erigitur; semper flaccidum & erectionem perfectam vel consistentem inhabile De quo legendus Zachias in cap. de signis virili tatis & impotentia.

See the English of this at the end of the Volume.

The next Thing they chide the Searcher for, is their having confirm'd their Doubts by the Absence of a Token which may no be shewn without excluding ones self, a St. Paul says, from the Kingdom of Hea ven. But besides that, I have irrefragably is she consuted this Calumny in my Replication set.

I have upon this Head a new Apology to dges offer Mademoiselle de MASCRANNY. 331 ther in Favour of each of the two Re-

us tests.

the What did the Sieurs Gayant and Marehalt lay more, than that the two Principles nich ought to contribute to render Man's spen infiguration effectual did not appear to men, and for that Reason, they could not illinge as to the Consummation of Marriage?

qual es it follow from thence, that if they

lical I seen the Tokens of the first Principle,

illusty would likewise have insisted upon

gidling those of the second. Tis plain they

uld not; and from their not presuming que Thing, because they saw nothing, it fum es not follow, that if they had feen ater nething, they might not have prefum'd on formething which they might not libile we seen. If I find a young Tree in the will risk of the Spring, without either Leaves Blossoms, I think it dead: But if I see y Leaves, tho' no Blossoms, the Leaves the me Hopes that there will be Blossoms; suse I find in it a Principle of Life, which ms to me to promise all the Effects of

the bits Thus, tho' I esteem him dead from the blence of both Tokens, nothing would all the me from believing him alive, if the e of the Tokens were present. And is shews that it is mere Madness to sup-on sethat those Searchers meant to lead the dest to any Ecclaircisement upon the second

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fecond Principle, which may not be a duc'd without a Sin. All they meant fay was only this, we presume nothing

cause we see nothing.

As to the Sieurs Hequet and Chevalian don't fee how the Marquis's Advocates of justly accuse them with grounding the Doubts upon the Absence of the sea Principle; for throughout their wholes port, there is not the least Mention me of that Principle, neither expressly, a implicitly; neither in plain Terms, nor equivalent Terms.

Indeed, after they had faid, that in on to judge whether the Marquis de Gesure capable of performing the Marriage Dut he must shew some Tokens of Motion They add, that those very Tokens wo not be sufficient to ascertain Consummaticand from thence they conclude that the must proceed to the Inspection which

offer.

But what can the Marquis's Advocation conclude from thence, more than that Searchers knew from Experience, that Tokens of Motion did not always infalli warrant Potency. But that we may of fult Modesty, we shall deliver in Latin Residue of what we have to say concernithis present Dispute, about the virile Ecacy.

Mademoiselle de MASCRANNY. 333

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Votant, quotquot impotentia argumentum farunt sive Camonista, sive Physici, multos riri quorum precipuum organum facillime rgit, imò superbè & pompaticé attollitur, tanquam ignis in stipulis incassum furit; l ac enim ante januam domina astitit, in limine fæde procumbit, spumeam animam ed liter evomens. Non rarum, nec infrequens le moc impotentium genus, de quo etiam Hostiquarit in Summa, utrum inter frigidos bami quarit in Summa, utrum inter frigidos ba-li sint, cum id vitii non ex frigescentia sed nor ex nimia caliditate sanginis patiantur. mjusmodi infirmitatis nobilissimum prestitit or uplum Poncianus Dynasta de quo apud Arreum praclarum extat monumentum.

Out It ut sit, id innuunt periti nostri, non omni otic lis organi impetui esse credendum; plurimos wo esse, in quibus vis erectiva quidem adest; non efficax quia non satis firma, robusta S the ut opus ad finem perducat : ideoque in ina semper requirendum quid effecerit imviri, sive primo aspectu vir apparuerat non. Nam si vir apparuit, non continuò vir am sint aliqui in quibus primum & pracivirilitatis signum vana specie ludat, spem Ili ens, sed re & effectu cariturum; si autem y co non apparuit, non continuò vir non est, in virilitatis signa modo latent, modo emer-

aq; ex inspectione viri nulla satis certa sena, sive pro virilitate, sive contra virilin ferri potest, sed utraq, dubitatio per in-Spectionem.

spectionem fæmine tollitur. Nam si in fæm na sigillum virginitatio ruptum appareat, co vis tissimum esse incipit, & virum impetu non a rere, & bunc impetum frustraneum non est the sed efficacem. Si vero sigillum remanserit inte grum & illasum, certa & violenta, ut aim nos Canones, infurgit suspicio, impetum, fi fon in vivo se exeruerit, esse fallacem; si vero hi non exeruerit, omnino a natura negatum. I he bac suspicio, quamvis prasumptive concluden indubitate probationis vim habet, cum Juper nitantur canones, ut patet per cap. propusuist the per cap. literæ, & per doctores omnes, nul for excepto. To any on all the Comment and the

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Hinc advertite queso, Indices, quam inam & futilia sint que contra peritorum nostroru Sententiam blaterant adversarii nostri: ill scilicet per inspectionem fæmina certiores fe voluisse, utrum succum virilem in se recepen Apage hoc monstrum cum id nulla investigation explorari possit. Id unum iis cordi fuit inquerire; utrum is impetus, cujus in Gesva levissima quidem initia cernebant, aliquand adesse potuerit; cum enim ex tos pore present tos porem perpetuum arguere non possent; nec ait ipsemet Gesvieus, à non erecto concluderes jy, a non erigibile, rectissime existimaverunt ex to quit non erigibile, rectissime exostinación dinturna simul & tam vana condormitione, i pur o erigibilitatem certò consequi, que est ipsissimolles acumentatio Capituli Proposuisti.

See the English of this at the End of the lich

Volume.

## Mademoiselle de MASCRANNY. 335

In the next Place I hear them tell mecon his arguing à non actu ad non posse; 'tis inferring Inability from the non-acting, from the Failure of Exercise; tho' in Logick intertis certain, that if the Argument ab actu ad im rosse is good, then a non actu ad non posse is for good for nothing. To them who talk at the confequence to be wrong, they think the Confequence to be wrong, they must not lay the Fault either on me, or the Searchers, but on the Decisions, on if the Doctors, and the Practice of the Church. for those Decisions, that Doctrine and Practice have no other Foundation, than hat very Argument which they condemn or Absurdity; it being manifest, that the ill bearch after Virginity would be a Madness, for in this Point the Consequence were not periogood à non actu ad non posse; and it is certion iain, tho' I should abide by that, the nam Objection would nevertheless be invincibly fura destroy'd.

But because we are now handling a Con-sent moversy, upon which every Man thinks necessimiself a competent Judge, we will satis-reasy, as far as we can, those that have an quitable Disposition, and shew them, that In the Canons too have their Logick, not a collegiate, pedantick Logick indeed; but Logick of Legislators and sage Politicians; fill such as is fitting for the Rulers of the World to have.

There

There is this Difference between a Le giflator and a Philosopher ; the Legisla tor is to accommodate his Rules to the Practick, and consequently must bend them according to the Exigencies of Mankind

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\* This is an Answer to a whimsical Conceit of the Manquis's Advocates, who pretend that in former Ages the Church used not to break the Marriage Bunds of Impotent any otherwise than provisionally; and that therefore it was not necessary for the Proofs to be so very home : But that fince the Decree of Langey, the Diffolution of Marriage on account of Impotency, is become definitive; and there fore (say they) the Proofs of Impotency must now be de monstrative.

We forbore to take Notice of this unaccountable Notion because we did not think it worthy of any Regard; but fince the Marquis de Gesvres's Orator has made our Silent a Matter of Triumph to himself; and because the Write who follows him Step by Step, and hardly does any more than translate him, would not fail to raise upon i mighty Trophies, me thought it adviseable to add a Note

in order to dissipate this Chimera.

Dissolutions of Marriage on account of Impotency, have in no Time heretofore been provisional, they were always final because, the Church in all Ages supposed, that he who Marriage was disolved by her for Impotenty, was irrepa rably impotent; and so she was far from loofing then

provisionally.

It is true, when it could be made appear to her that h was deceived, and that she had taken for an Impotent one that was not so; she judged that in that Case her Er ror could not burt the Indiffolibility of the Sacrament And this gave Occasion to the Maxim of the Canonists Sententia in Caufa Matrimoniali lata, transit in rem judicatam. But in the first . Place, 't very improper to Say, that that Judgment is provisional which

# Mademoifelle de MASCRANNY. 337. The Philosopher on the contrary, who applies himself to the Search of Truths purely speculative, must make to himself such

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which, the definitive, is subject to an erronious Proposition. In the fecond Place, the Maxim above cited is as true now. as it was at any Time beretofore; and a Man must be delirious to think that it was abolished in the Decree of Langey. The Sieur de Langey being loos'd from his Marriage with his first Wife for Impotency, marries a fecond, by whom he has seven Children. After the Death of the first, he sues to have that Decree revers'd, which had diffolved his first Marriage, and pleads his having feven Children; his Suit however is rejected, and that Decree, instead of being revers'd, is confirm'd. Does it follow from hence, that the Parliament establish'd it for a Rule. that the Decrees disolutive of Marriage fould, like all others, have the Force of an adjudged Point? No, doubtlefs, the Court intended no fuch Thing. All that can be inferr'd from that Decree is, that the Court did not think they ought to re-establish a Marriage contracted with a Woman already dead, to vacate the fecond Marriage contracted during the Life of the first Wife; and consequently to prejudice the Fortune of the feven Children, who were the Issue of the second Bed. We may likewise infer from the Decree, that the Court did not look upon the Birth of those seven Children to be a good Proof of Erroneousness in the first Judgment which had declar'd the Father impotent; undoubtedly because the same Husband might have been impotent to his first Wife, without being fo to his fecond. And as on these Occasions, every Thing is used to be presum'd, that is possible to be presum'd; the Rule would have it, that this relative Impotency, which is so common, should be presum'd in Favour of the Children's Fortune and Condition. But this does not at all affect the Maxim: Sententia matrimonialis non transit in rem Judicatam. This Maxim has always been in Force; the only Difficulty is to prove the Erroneousness, which is very rarely possible.

Rules as may direct him to the Knowledge of those Truths; and those Rules are to be as immutable as the very Truths he feeks after. This last applies himself to know what exists, what actually is in Being; the other what is practicable, what may be. And this is the Reafon why the one is oblig d to stop, when he is got to the ultimate Period of Possibility; but the other is not to ftand ftill till he has atrain'd, or is cut of Hopes of attaining the Certainty which he is in Pursuit of.
This Difference of the Object occasions

that the fame Argument, which would be good for nothing with the Philosopher, is an excellent good one with the Legislator, or, (which is the same thing) with the Judge who walks in the Path which the Le-

giflator has mark'd out to him.

Thus, tho' the Argument a non actu ad non paffe, has no Admittance in Philosophy, it does not follow that it may not be conclusive in the Law; nay, it does not follow but that 'tis really conclusive whenever 'tis impossible to hit upon any other that may have a stronger Foundation.

I shall be undoubtedly told that even in Matters which are not within the Province of Philosophy, in moral Matters, in short in Point of Conversation, no body ever concluded, a non actu ad non posse; for Example,

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to it,

Mademorfelle de MASCRANNY. 339 ample, (they'll fay) a Man would be laugh'd at, thould he argue thus, fuch a Man does not marry, therefore he cannot marry. I answer, that we must diffinguish between contingent Acts, which depend upon Humonralone, Acts which a Man is free to do or not to do, and Acts that are not contingent, that is to fay, Acts which are connected with a Step already taken, Acts which are consequent to and dependent upon that Step, Acts, in short, which a Man is not fully at Liberty to do or not to do niewo

To marry is a contingent Act, an Act which depends upon Man's Free-Will, an Act which we may be led to, or diverted from, by a thousand fortuitous Causes, and by the Concurrence of a thousand Hazards. Impotency is but one of a thousand Causes that may make a Man keep himself a Batchelor, and confequently twould be great Presumption to impute Celibacy to Impotency; 'twould be flattering ones felf that we had guess'd the true Cause among a

Thousand.

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But when once a Man is married, is the Performance of the Conjugal Duty a con-

tingent Act? No furely.

A Husband's Duty is fo interwoven with a Hufband's Condition, that he is not at Liberty to omit it; the Hufband is forced to it, if not by a Physical Necessity, at

least

least by a Necessity of Duty, by a moral

Necessity.

And therefore, when a Husband does not discharge his Marriage Duty, there is at least a Certainty that he cannot discharge it; a Certainty so much the stronger (in the Eye of the Church) for being grounded upon that Rule of the Apostle; Vir uxori debitum reddat, smiliter & uxor viro, grounded likewise upon the general Constitution of Man, upon the Course of Nature, and upon Experience, or rather upon the invincible Inclination of one Sex towards the other.

For as the faid Inclination operates upon all who are capable of feeling it, it follows that they, in whom it does not operate, ought to be reckon'd incapable of that

Feeling.

Therefore, the Duty of a Husband not being a contingent Act, we may very well

argue à non actu ad non posse.

If there have been some very rare Examples, certain Prodigies of human Vanity, or certain Miracles of Grace, who have mortify'd the Flesh, and deadned the Force of natural Inclination, and could in one and the same Subjects reconcile Ability and Continency together, I answer in the Words of the Law: \* que bis aut semel contingunt, pratereunt Legislatores.

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It is a Greek Law in the Text de Legibus.

### Mademoiselle de MASCRANNY. 341

With Law-makers, Events that border upon Prodigy go for nothing; for otherwise, there would be no Certainty in any thing, if People might be allow'd to say, such a Miracle might happen, such a Prodigy might come to pafs.

Would you know how the greatest Men for Sense and Learning argue upon the ve-

ry Thing now before us?

Let us for Example hear the great Argentraus, whose excellent Judgment and extensive Learning will undoubtedly be de-ny'd by no Man.

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This great Man, in the Place I before quoted, recites a Question which was arisen relating to an Impotency like that of the Baron du Pont's. The Wife, upon Infpection, was found to be a Virgin; and yet in her Husband's Person there were found fuch Presumptions of Potency, as did not in the least appear in the Marquis de Gefvres. The Wife was perpetually challenging him to the Congress; but the Husband as often declin'd it, and took no other Course to clear himself but by running away. Upon this, a Sentence passes, ordering both of them to be inspected a new: But in both the one and the other, the Parts are again found to be valentes & integra, valentes in the Husband, integra in the Wife. In the end, the Husband not only grants that he is impotent, but likewife

wife agrees in the Character and Defcription which his Wife had given of his Impotency, which was this, erigere quidem illum & nervum tendere, sed cum admenisset sum finni, precipitata festinatione sic semen emittere, ut nequid emitti posset, ac ne intromitti quidem colon posse: Her Husband's Thing did stand and was fliff enough; but fo foon as he had touch'd her Body, he let fly his Seed, fo that none of it could go into her Womb, neither could his Thing possibly make its

Way into it.

The Physicians being of Opinion that the Impotency might be remedy'd, agree, that when the Spring came on, they would apply proper Medicaments thereto: But in the mean while the Husband dies, and the Wafe demands her Dowry, and her Matrimonial Stipulations: This gives Occasion to revive the Question about Impotency, because the Dowry and Stipulations did imply a Marriage, and the Marriage implifed a potent Husband. And fo the Question was (after the Hushand's Death) whether he was potent during his Life. Now abserve how Argentraus argues upon the Case: The Hopes of the Cure which the Physicians had promis'd, he looks upon as nothing at all, because he does not think that we can be fure of any thing till we fee it. Then putting together the Circumfrances of the Cause, the Husband's shun-Wife ning

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Mademaiselle de MASCRANNY. 343 ning the Congress, his Youthfulness his hale Constitution, the Care his Wife took to blow up a Fire, which would not have fail'd to have kindled in him, if there had been any left, the Ineffectualness of all her Cares, and a Maiden-head which had escaped so many Attacks; having (I say) put all these Things together, he concludes, that a Man must be a very Ass to doubt of the Impotency, in vixi dissimulations, cum prograftinavetun, cum diem distenderet, ille interim firma valitudine, state inscendente, formina ipfa, omnes delicias intendente, vegeto corpore, astuanti sanguine, mellitis colloquiis, cum illa muda mudo accubaret, saxeus interim, & Zenocrate magis lapidius, nibil prestaret; quis big tam supidus effet, qui bis dubitaret effe, quod in natura vitium offendisset? quis adbuc tessimonia erat desideraturus? bac vero non tam indicia sunt, quam invide probationes.

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Thus do wife Men argue. Thus do they call by the Name of infallible, infurmountable Proofs, that which Men without Principle will not own for any Proofs at all: So true it is, that to judge of the Forcibleness of a Proof, it is not enough for a Man to be endu'd with Sense and Reason alone, he must have some Knowledge of the Law, he must know what constitutes the Certainty of a judiciary Proof, and to what Degree such Certainty may extend. Otherwise, as many Judges, so many Pyrrhonists,

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and confequently fo many Persons incapable of being Judges.



## CONCLUSION.

Searchers, especially the latter, have discreetly executed what you discreetly order'd. You see, that without turning aside either to the Right or the Left, they have sollow'd the Line which you chalk'd out to them; they have given you to understand, that when a Man's Ability is in Dispute, there are but two Ways to clear up the Doubt, namely, to examine whether the Causes of Ability reside in the Man, and in the Woman the Effects.

A superb and pompous Appearance of Ability is oftentimes fallacious and deceitful. But Persons who can afford no such Shew are justly to be distrusted. The former do indeed give Grounds of Hope, but so do they likewise of Fear: The latter give Grounds to fear every Thing, and to hope but little: But neither of them surnish the Certainty that may be acquir'd. Such Certainty is not acquir'd, but by exa-

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Mademoiselle de MASCRANNY. 345 mining the Effects, which are seated in the Person of the Wife.

Nothing is more clear nor more certain, than this Way of Reasoning; for when the Effects appear, we can no longer doubt either the Existence or the Efficacy of the Cause; as, on the contrary, when they do not appear, we may reasonably conclude either that the Cause does not exist at all, or that if it does exist, it is utterly ineffectual. A Conclusion which at least carries with it a moral Certainty, and a Judge can desire no more.

Our Searchers having only examin'd the Subject in whom the Cause of Ability should reside, they could not possibly come to a Determination, they could not finish their Reports. And yet I dare say, Gentlemen, you will not, without a finish'd Report, take upon you to decide a Cause of this

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1-15 The Searchers therefore must be put in a Way of finishing it. They must have a farther Insight into Matters. They must have it in their Power to confront the Effects with their Cause, the passive Subject in whom those Effects should appear, with the Agent in whom the Cause ought to have appear'd. In a Word, since they cannot judge of the Cause in it self, they must be enabled to decide it by its Effects.

Bear

Bear with me, Gentlemen, a little Ionger, and let me observe to you, that every one of those Presumptions, which determin'd Argentraus to declare the Hulband above mention'd impotent, do likewife con-

cur against the Marquis de Gefores.

The former fled from the Congress, proctossinabatur, diem distendebat: The Marquis de Gesmes, with his utmost Endeavours, de Gesmes, with his utmost Endeavours, opposes the Inspection of his Wife, in whom, if we are to credit, his Answers, there can remain no manner of Token of Virginity; in whom there's not a Fibre nor a Membrane, but what, if he fays true, must loudly proclaim the Consummation of Marriage. The Marquis not only with-stands his Wife's Visitation, but he fears to be visited hunself a second Time, and gives you plainly to understand as much by his printed Memorial.

The Husband, who is spoken of by Argentrans, was in the Vigor of his Age, atate

inscendente; so is the Marquis de Gesvres. Argentraus's Man, except as to Impotency, was of a found Constitution, valenti corpore: The Marquis de Gefores is fo far from being impotent through Sickliness of that he cracks of his good Constitution, Habit of Body.

Argentraus's Man had, without Emotion, pass'd through many Condormitions, and 2895

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#### Modemoifelle de MASCEANNY. 347

withstood all the Temptations thereof; the Marquis de Gesures has done as much. Why therefore may not we conclude with Angentraus, Quis tam supidus esset, qui in co natura vitium non offenderat? Quis adhuc testimonia desideraturus est? Hac vero non tam sunt in-

dicia quam invicta probationes.

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I would not have you judge of these Prefumptions fo advantageoutly as Argentraus judges of them. I would not have you take this Concurrence of Circumstances for any Thing but a Heap of Prejudices. I would not have you reckon for any Thing the Judgment of the Court, City, Country, who upon reading only the Interrogatories and the Marquis's Memorial, are convinc'd of the Impotency of that young Lord. In fhort, I would have you fet afide the Impossibility that there is for a young Lady to conceive, execute, and accomplish the impious and extravagant Enterprize of escaping from the Bonds of Marriage by a Loop hole fo impracticable, as is a false Accusation of Impotency; the Impossibility that there is for this Lady to flatter herfelf, that her Husband (were he a true Hufband) might not however he able to prove himself so to the Searchers; and, which is more; the Impossibility that there is for her to flatter herfelf with reforing in her Body the Tokens of Virginity,

nity, nay, to reftore them with fo much Art as to deceive Art it felf. In short, the Impoffibility that the could hope to go thro' with her Imposture against that terrible Appearance of Authority and Power, without which the Marquis's Cause dare not shew it self. Once again, I would have all these Impossibilities reckon'd for nothing, or at least I would have you look upon them as no other than Confiderations fitter to enlighten the Eyes of the Man, than to illuminate those of the Judge: But at the least the Man sees, and all our Bufiness at present, is, to put the Judge in a Way of feeing. Now to put him in that Way, you need only take but one Step, you need do no more than admit my Proof; it is a juridical and canonical Proof, a Proof fram'd for the Instruction of the Judge; in short, a Proof from whence (the Judge's Eyes concurring with the Man's) there will iffue a Work of Justice, which will restore to a Sacrament its Dignity and to my Client Peace of Mind, & erit opus Justitia paxitied side tot airsoner

Now, if my Client should be so unfortunate as to be excluded from this Proof; if you that up this fole-Sky-Light, this fingle Opening, through which the Sun may enter, what would be the Confequence, Gentlemen? (I tremble to think on't, but

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Mademoiselle de MASCRANNY. 349

I must speak it) The Marquis's Impotency, the manifest to the Eyes of the Man, would remain invisible to the Eyes of the Judge. And because the Church holds it for a Rule to judge of nothing but what it sees, she would be constrain'd, tho' with' Reluctance, to leave in Force a fatal Bond, because of the Impessibility she would put herself under of perceiving the Seam by which it is dissoluble, or rather, by which it is no Bond; and then an imperious Law would force her to launch her Thunder and her Cenfures, to constrain my Client to rejoin herfelf to a Husband whom she knows to be an Impotent; to enjoin her, I fay, to become the May-game, and, what is worse, the Bait of those finful Ebullitions. which startle Nature, and which we hardly dare fo much as think of.

But yet, on the other Hand, a Law still more imperious, namely, the divine Law, would with-hold my Client from yielding to those sacrilegious Extravagancies; and then, according to the Canons, she would have no other Course to take, but humbly to bear the Opprobrium of Excommunication, the Privation of the Sacraments, the Excision from the Body of the Church, with all the other Effects of the Spiritual

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I very well know, that the would have Matter of Confolation in the Eye of God; I very well know, that the would be in the Number of those who are spoken of by St. Ferome in the Canon Si quis non redo, Sunt qui foras mittuntur & tamen intis manent. They are turn'd out, but yet they remain within; they make no longer any Part of the Body of the vifible Church, but still they are Members, nay, the mest valuable of that invilible Church which is feen by God alone. I likewise very well know, that it is in Relation to the faithful Souls, reduced to this fad Condition, that St. Auffin us'd this glorious Expression, Hos covenat in occulto Pater, in occulto videns. But you will grant me, Gentlemen, that a Holy and Christian Soul cannot be in a more deplorable Case, than that of being fore'd to diffobey the Church, if it will obey God, or to disobey God, if it will obey the Church, And therefore I truft, that your Conscience and Wildom will incline you to make Use of all the juridical Expedients that may polfibly exempt you from reducing my Client to the cruel Necessity of fo unhappy a Choice.

I therefore pray that my Client may be vistted by Matrons, agreed to on both Sides, or else nam'd by your selves for that Purpose; which

Mademoiselle de MASCRANNY. 351 which Visitation shall be performed in the Presence of the Searchers who inspected the Marquis; and according to the Report, you will order, as in Reason should be ordered, and the Marquis be condemned in Costs.

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M. BEGON, Counsellor. FOULON, Proctor. BENARD, Attorney.



First, he says, that we are not to wonder that moral Certainty is sufficient in countries. Materia, that that which removes a mineral so there being a written so to Officiens, but that it is

which kills that he needed in draw the thre-



#### SECOND REPLICATION

FOR

## Madam de Gesvres

AGAINST

## The Marquis de Gefores.

Gentlemen.

Have given more Attention to my Brother's Plea than he imagines; and he shall see that I have so by very good Tokens. I shall answer three of his Propositions.

First, he says, that we are not to wonder, that moral Certainty is sufficient in criminal Matters; that that which renders it sufficient, is there being a written Body of Law as to Offences; but that it is not

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not so in Cases of Impotency; that Impotency is an Offence of Nature; tis a secret Delinquency; a Delinquency upon which no real and sensible Certainty can arise, unless it be when Nature has err'd in the

Regularity of the Conformation.

Secondly, he fays, that we ought not to be surprized, if in the four Examples which we have cited, the Proof of Virginity has been admitted since the Abolition of the Congress; that that which caus'd the Inspection of the Wife to be admitted on those four Occasions, was the Consent of the Husbands; and when a Husband is so indifferent as to what concerns his Wife's Modesty, and is so little tender of her Honour, as to give her up to the Searchers, nothing then hinders the Secret of Virginity from being examin'd into.

Thirdly, he fays, we were in the wrong to look upon the Inspection of the Wise to be the sole Canonical Proof; for that there are several others established by the Laws of the Church; as for Example, the triennial Cohabitation, which is a Proof not to

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## 354 YNNA The GASE of mehall

fo in Cases of Impotency; that Impo-Confutation of the first Proposi-Desinguency; a Deliguency upon which works, and femilial terrainty can asile,

be when Nature has errd in the That moral Proofs, or which is the same Thing, Probabilities, do Suffice in a riminal Matter, for no other Reason but because there is a written, establish'd Body or Book of Delinquencies.

His Proposition is coind purely to shake the Distinction which I had establish'd in my general Answer, between physical Certainty, necessary to a speculative Philosopher; demonstrative Certainty, necessary to a Geometrician; and mora Certainty sufficient for a Judge.

This Diffinction being the Basis of my whole Argument, you will give me Leave, Gentlemen, before I proceed thereto, to make you sensible of it by some new Examples, which will not be foreign to the Matter in Hand, and will not a little con-

tribute to give fresh Light thereto.

A Physician, who, to amuse himself at his Leisure, shall contemplate the Proceedings of Nature, shall take it in his Head, that she has within herself wherewithal to repair the Tokens of Virginity after they are effac'd; he shall make a System there-

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upon, he shall mark out all the Routs which Nature is to follow, the Point from whence the is to let out, the Places where the must stop, the Operations she is to perform in each Place where the tarries, and at last, the ultimate Period of her Course; and from all this he shall make you a new Maidenhead so like to the former, that it shall puzzle the skilfullest Judges to find out the Difference. Bring this Physician into the School, and there let him stand out to dispute; he will stoutly maintain, (upon the Credit of his Idea) that the Tokens of Virginity are uncertain; and why hould he not maintain it? Can any Parador be improbable to him, who fets up to be a Guide of Nature, and who pretends to make her walk in the Paths he traces out to her? Aristotle thought nothing more conclusive than this Enthymem; Lac babet, ergo peperit; she has Milk, therefore she has bad a Child, and yet the Modern \* Physicians have found a: Way to bring Milk into the Breast of Virgins, and so the Enthymen is no longer good for any Thing. But where does it cease to be good? In the Warmth of a Dispute, in the Contradiction of a Thefis, and, to be short, in the Tumult of a School; for in the Practick, red Men. Nature may aft of

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<sup>\*</sup> Zachias de Signis Virginitatis. Ambrose Pareius, in his Trast of Reports.

and in the Science of the Searchers it is still conclusive. And this occasions the Difference that is observ'd to be between an Author-Physician, i.e. a Disputant-Phyfician, and a Practifing Physician, alias a Searcher. The first doubts of every Thing, while the second doubts of nothing. Why this Pyrrhonisim of the one, and this Dogmatism of the other? The first seeks not so much what Nature does, as what she may do; whereas the fecond minds not fo much what she may do, as what she really does do: the first may always doubt, be-cause he contemplates; the second cannot doubt, otherwise than as it is necessary to come at a Decision, because his Business is to decide. To conclude, the first takes for his Guide his own Ideas, which form nothing but a Heap of Doubts; and on the contrary, the fecond takes for his Guide Experience, which hardly leaves any Doubt at all; I say hardly; for I do not pretend that Experience is infallible; for if it was, it would afford a physical Proof, and we should have no need of moral Certainty.

What's the Reason why the Certainty of the Tokens of Virginity is not a physical Certainty? Because, in the Opinion of se veral learned Men, Nature may act contrary to her ordinary Course. What's the Reason why, notwithstanding such Possi-

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Mademoiselle de MASCRANNY. 357

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bility, the Certainty is however moral? Because tho' Nature may act by the Rule of Contraries, yet she does not act so; and this is what reconciles the speculative Uncertainty of the Tokens of Virginity taught by some Books, with the practical Certainty of those same Tokens, as we find it in the Practice of the experienc'd Physicians. Books of Speculation tell you those Signs are uncertain, because Nature may play Tricks. Practitioners tell you, those signs are certain, either because such Possibility of Trick-playing is perhaps a Dream; or supposing it to be no Dream, it is at east a very rare Thing for Nature to walk n those extraordinary Paths which Men's maginations trace out to her; and the Raity of fuch an Event is sufficient to raise nus a moral Certainty, as fuch moral Ceride ainty is sufficient for a Man to judge of all ny forts of Questions, not excepting even ot sich as concern the Life, Honour, and Forif time of private Men. of,

This is not to be wonder'd at, say they, a criminal Processes, because there's always in Being a Book of declar'd Delinmencies. A wonderful pretty Answer this! loes the Certainty of the Book of Delinmencies give the Judge any Certainty twards convicting the Party arraign'd? Adead Body is found pierc'd through and brough with feveral Wounds. 'Tis true,

there we from it handled at in ge in Zichlar.

crime committed; but that it was committed in the Party accused, or by another, is what the Judge cannot be all furd of, but by a moral Certainty, by Probabilities, by Conjectures. And this physical Certainty which is had as to the Perpetration of the Crime, does never yield a physical Certainty as to the Author of it.

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Let us go farther: If it be true, as our Adversary pretends, that it is the Certainty of the Book of Delinquencies, which in oriminal Affairs gives the Force to moral Proofs, let us fee if there can remain any Room for this Kind of Proof, and whether or no, to reltrain the Ulage of them to one single Case, where the Delinquency is certain, be not to exclude them from the greater Part of Judgments. Indeed, if we except Murther, burning of Houses, and some other Crimes, which leave behind them visible Traces, we shall not find any wherein the Book of Delinquencies may be said to be clear and manifest.

\* Shall we, for Example, find a Book of plain Delinquencies in the Case of Adultery, Incest, and such abominable Enormities of Uncleanness, which divine and human Laws punish with Fire? Do we find any such Thing in the Case of Usury, Simony,

This Question is handled at large in Zachias.

Mademoiselle de MASCRANNY. 359

low Poylon, &c? We find to little thereof in this last Case, that Physick it self confesses the knows not what Judgment to make thereof, and tis one of the most con-cited Questions among the Professors of hat Art, utrum judicari possit an quis neca-us sit, veneno dato, vel mortuus veneno iuato.

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We cannot therefore, according to the ew Principle of the Marquis's Advocates, ır n any of the above Cafes truft to moral in lertainty, because the Book of Delinquenal ies is not flagrantly clear. We must, if re would try them, stay 'till physical Cer-er anty drops from Heaven; and by this ne leans an infinite Number of Crimes would o unpunish'd. This therefore plainly news, that the Certainty of the Body of we elinquencies is not what gives an Authoand ty to moral Proofs in criminal Affairs; wonly. Thing which authorizes them, the Hill ly Thing which gives them their Force, ny on the one Side a Necestity of Tryals, and on the other an Impossibility of findof g Proofs of any other Sort, or, which is ery, he same Thing, an Impossibility of attainsol g to a superior Degree of Certainty. nandow, this Necessity and this Impossibility thy both meet in Questions of Impotency; in the reference there is a Principle for deciding how are upon bare moral Proofs.

In vain do they deny to us the Necessity of fifting Questions of Impotency; in vain do they tell us, that in such Processes the Business in Hand is not to make Examples in terrorem, or to provide for the publick Safe. ty; all this is no where true, but in the new School of Theology erected by the Marquis's Favourers. And indeed fince the fundamental Principle of that School, is that the Marriage of an Impotent has no thing to diffinguish it from the Marriage of any other Person, we are not to wonder if therein they call Questions of Impoten cy vain Amusements and empty Follies Nay, we ought rather to admire why the don't treat fuch Questions with the Appel lation of impious and facrilegious Attempts for that's the Name which those Sectario ought to give them, if they would be con fiftent with their Principles.

But as this fame School is fo empty an thin, that it does not deserve to have it Doctrine taken Notice of; it will be a ways true, both that the Church is as muc concern'd in clearing up an Impotency, the State in enquiring after Crimes; an consequently, that the Church is oblig'd threaten, to strike, to punish, either to cure the Sacrament from Prophanation, to preserve Christian Souls from that Inu No dation of brutal Impurities, which to is not

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Mademoifelle de MASCRANNY. 361 Marriages of Impotents bring along with

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We must go farther, and fince our Adverfaries are infenfible to every Thing but earthly Impressions and worldly Ideas, it is indubitably certain, that even the Interest of the civil Society requires, that the Church should on these Occasions make Use of the Authority left her by felus Chrift. For who doubts that the Marriage of an Impotent carries Treaton with it; nay, an enormous Treafon; a Treafon which is as hurtful to the Security, as it is to the Sanctity of Matrimony? Who doubte that this Perfidy corrupts the Confent, which ferves as Matter to the Sacrament And who doubts that the Matter of a Sacrament being once corrupted, it is imporfible for the Sacrament to be form'd? If this be so, here's a young Woman abus'd. a Father and a Mother cheated; this Wo-man is involved in the Abuse of Marriage without being marry'd, she is become a Concubine to a Statue; and would to God it were no worfe than a Statue! Here, I lay, is an unfortunate Woman deliver'd up to the Horrors of a Fire which confumes without burning, and which never dies, because it is always dead.

Now after this, let them tell me, if it is not for the publick Good to have so cruel Fraud suppress'd; let them tell me, if

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there's any Crime that does more effential ly violate Society; and if it is not destroy ing the publick Safety to leave fo great, a Mischief unprovided of a Remedy. But I have faid more than enough against the first of the three Propositions which I undertook to confute vacions living add to

We will now proceed to the second, and make it appear, that if the Church has continued, fince the Abolition of the Congress, to inspect the Wife to come at the Husband's Impotency, she never thought herfelf oblig'd to wait for the Husband's

Confent in the Use of this Proof.

But first let us run back to the Source of this Error, and see what it was that gave Occasion to our Adversaries to frame such a Paradox

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## a Father and a Mother chested . This Wo-Confutation of the lecond Propowithout being mannoing the is become a Concultine to a Statue; and would to God

That Since the Abolition of the Congrest, the Inspection of the Wife was never order'd but when the Husband was confenting thereto have wis environment

THE Marquis de Gesures's Advocates have fancy'd, that the Inspection of the 2 systia

Mademoifelle de MASCRANNY. 363 the Wife which was practisd during the Time of the Congress, was nothing but a Preparative, or a Concomitant of that Icandalous Scene which was play'd in those Days. From thence they have concluded, that the Abolition of the Congress carry'd along with it that of the Inspection; and because they were shewn by a great Number of Examples, that after the Congress was abolish'd, the Practice of Inspection was continu'd, they endeavour'd to falve it by an Evafion, namely, by pretending that in the particular Cafes offer'd for Pre-cedents, the Husbands were always confenting to the Inspection of their Wives. Prodigious! (faid they) that those Husbands should suffer such an Injury! They were confenting to it, volenti non fit injuria.

At present therefore we are to enquire, whether it be true that finch Consent of the Husband's was ask'd; whether it be true that such Consent was given, and whether without it the Proof would have been un-

lawful and injurious.

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But before we enter into the particular Discussion of each Example, let us lay open the Fallacioufness of the Principle, and fince they attack our Precedents merely by Supposing, that the Inspection having been condemn'd as a Concomitant of the Congess, it was no longer lawful to make Use of it without the Husband's Consent; we. elliw andergo the fig. Riffersion. Tagerean, fol-

The CASE of will make appear how falle an Allegation it is to fay, that the Inspection which we demand was ever dependant upon the Congress, or that the Condemnation of the one

imported that of the other.

In the first Place there's no need to obferve, that the Inspection of the Wife being a much older Proof than the Congress, tis impossible it should have been invented to serve any Turn of the Congress. This is what every Body knows very well. But there's one Thing which every Body does not know, and yet 'tis necessary they should, in order to take away the Quibble, namely, that in the Time of the Congress the Wife went through three different Inspections, which had each their particular and diffinguish'd Object

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\* At first, the Huband and Wife were vilited in one and the same Day: The Wife after the Huband. And this first Yi fitation had for it's Aim the Enquiry after Virginity: For f if the Wife did not prove to be a Virgin, the loft her Caule without any farther Examination, unless the Hushand, out of a Bravado, would stand the

Regreed attack out Precedents merely by uppoling that the Infrestion having seen

ondemn'd as a Concomitant of the ConRegereau, fol. 81.

Tagereau, fol. 81.

Tagereau, fol. 81.

The Wife who certain, that the Wife who was mar y'd when a Widow, to an Impotent, did not Welto undergo this fiest Visitation. Tagereau, fol-

Mademoiselle de MASCRANNY. 365 Congress, as the Sieur de Langey did. If on the contrary, the Wife upon the Visitation prov'd to be a Virgin, the Husband had no Relief but by the Congress; and if he refused to stand it, he was, ipso facto,

adjudg'd impotent. †

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Of the two other Inspections which the Wife underwent, the one preceded, the other immediately follow'd the Act of the Congress; and the Intent of these, was to let the Searchers know whether the intermediate Congress had wrought any Alteration in the Person of the Wife. As to these two last

What was likewife faid of the Sieur d' Argenton, in the aforefaid general Answer, was borrowd from the last Chapter of Rouillard's Reliefs Forences, who pleaded the

Cause of the Sieur & Argenton 17

† Tageream, pag. 195.

What is here faid of the Sieur de Langey, a likewife what was faid of him in the general Answer, was extracted out of the Journal de Palais, or the tearned and eloquent Plandings of the Attorney General Lamoignon, whose Manuscript Copies are Abroad in Several Persons Hands.

There is one particular Reflection, which we must not omit, concerning the Sieur. de Langey, namely, that it is so true clius he was the Levson who fent the Challenge of the Congress that it gave Occasion to a Sort of Contest between his Wife and him; he demanding the Congress, and the refuting it. By a Sentence, du Chatelet, and afterwards by Decree the Congress was order'd. Thus the Musband gain'd shat Meldent , but the Execution of the Incidentinot proving favourable to him the was for that Reason, and no other, cast in his Cause definitively.

last Inspections, Widows were subject to them as well as others. Now its thefe, and none but thefe, that may be faid to be Concomitants of Dependants of the Congress; and so they vanished with the Congress. But as for the first, which was no more than the Practice of the Decretal Propositiff; it had to little Affinity with the Congress, that as it was customary before the Congress was introduced, so did it con-tinue after the Congress was destroy d. At no Time, either before or after the Condemnation of the Congress, did it ever

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enter into any Man's Head, that this Proof requir'd the Confent of the Hufband accus'd

of Impotency. mail sain la bis Twould be ridiculous to suppose it, and we can't conceive how the Partifans of the Marquis de Gefores can make it agree with their Principles. For if the Inspection of the Wife is, as they pretend when they are in their Fury, a Profitation, will the Hulband's Consent purge it from that Infamy? If the Search after Virginity can produce nothing but Doubts, will those Doubts cease upon the Hufband's confenting thereto? Will the Hufhand's Acquiescence enlighten the Eyes of the Searchers? For God's Sake, what Sympathy is there between those Eyes and that Confent? Indeed this is very extraordinary, and the Logick of the new

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new School may be faid to be no less un-

accountable than its Theology.

But let us proceed to the principal Point for which we were oblig d to undertake this fhort Differtation; and the the Infight which we have just now given into the ancient Practice of the Congress, makes it impossible to think, that the Condemnation of that infamous Probation drew along with it that of the Inspection, and lefs. ftill that the Inspection ever depended upon the Hulband's Consent; yet by the Difcussion of our four Examples, we shall prove, that that Consent was but very little, if at all regarded. bad to keed a brownist off it

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The first of the four, is that of Cajolas, whose Wife was visited in pursuance of an interlocutory Order of this Officialty, dated the 3th of March, 1689 This Order is very simple, both in its Qualifications, and in its directing Part. The Qualifications are, Maria Angelica le Maitre, Plaintiff, for annulling ber Marriage on Account of Impotency of the one Part; Henry Cajolas, Defendant, of the other. The directing Party The Parties being beard, we order them to beview'd and inspetted, &c. Thus I had Reafon to maintain, as I again do, that the Inspection of the Wife was order'd, ex Officio, with that of the Husband, and without the Husband's Consent. Neither is thereany Thing in the Proceedings, (which are

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upon Record) that can make it be prefum'd that fuch Confent was required.

But, fay they, it appears by the Interrogatories of the Parties, that before the Suit began, they mutally agreed to be inspected by two Surgeons. Consequently, conclude our Adversaries, the Husband had already prophan'd his Wife, and he could not after that take it ill if the Official expos'd her to a fecond Prophanation, Really this is a very frange Way of Reafoning. Could the Official effeem as any Thing this pretended extrajudicial Prophanation? and rould a Judge have argu'd in that Manner, if the Hulband's Consent had been a Thing necessary? The Husband was pleased to facrifice in fecret his Wife's Modelty, reckoning that that Sacrifice would be attended with no Buffle or Scandal, and that there would not remain any Monument of it in publick: Therefore he was pleas'd in feeing the same Sacrifice reiterated by a judicial Order, with all the noify Circumstances that attend judicial Acts, nor was uneafy at its being handed down to Posterity hy a publick Record. In good Truth, if Monsieur Cheron, for he was the Official, had been capable of deducing fuch an abfurd Consequence, he would not have been wonthy of the Place he fill'd. out the Hadrand's Confort, Mither is there

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## Mademoiselle de MASGRANNY. 369

But then they infift that it was no Wonder, if in the Rufinels of Cajolas, the Infipection of the Wife was practised, fince the two Spoules accus deach other reciprocally, the Husband imputing the Non-Confurmation to the Wife, and the Wife imputing it to the Husband. When this is to, say they, both the Conformations become suspicious; and then there is no avoiding to clear up the Suspicion by a double Visitation.

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Visitation.

I answer that this has no Foundation in actual Truth: For if the Wife of Cajolas complain'd of her Husband's Impotency, the Husband did not charge any Vicious-ness of Make in his Wife's Person; and to prove this, observe his Answer to the 23d Interrogatory, says, That he is really potent,

and has consummated the faid Marriage.

Does this look like retorting Impotency upon the Wife? Is this faying that the Wife has an Impediment in the Formation of her Body to hinder Confimmation? It is true, in the XVth Article the Hulband charges the Wife with certain nocturnal Rebuffs, and at the fame Time afcribes these Rebuffs to a certain Cause which he won't unfold. But this Cause could not be understood of a vicious Conformation, since such a Viciousness would have been incompatible with the Consummation which he himself had confess'd; therefore it cannot be

be construed into any Thing but one of those Causes that a Hosband in Anger leaves to be guessed at.

Proceed we now to the fecond Example;

that of Hubineau.

There is so much Conformity between his Case and ours, that you must not won-

der if we dwell fome Time upon it.

The Imspection of Hibinean was ordered by a Sentence of this Officialty, dated the 20th of February, 1700, conceived in very simple Terms: We order the said Hubineau to be visited in his natural Parts. This was all the Contents of it.

In Execution of this Sentence, the Searchers make their Report the 27th of the fame

Month to this Effect:

After baving examin'd the said Hubineau, with all due Attention, in every one of his necessary Parts, in order to inform our selves whether he was sit and capable to fulfil the Duties incumbent on the Marriage-State, we cannot give a Decision sufficiently clear and valid, unless we first visit and examine his Wife, from whence we may get the necessary Light for drawing up a Report juridical, certain, and decisive, as it ought to be in an Affair of such Importance.

Pray, Gentlemen, observe, by the by, that these Searchers propose, of their own Accord, as ours do, to have the Wife visited. They were no more authorized than

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Mademoiselle de MASCRANNY. 371

ours, to hint at such an Order; and yet they made no Scruple to suggest it to the Judge. And why do they make no Scruple, but because it is ridiculous to imagine, that a Practitioner consulted upon a Question of his Art, has not the same Liberty to offer an interlocutory Advice; as to offer a definitive Opinion? As if the Choice of one or t'other did not entirely depend upon his Conscience and Discretion.

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After this Report, Hubineau's Wife is interrogated upon the Articles exhibited by The XIth and XIIth Artithe Promoter. ticles of this Interrogatory run thus: Whether in the present Doubt of the said Hubineau's Impotency, she consents to be inspected, in order to know where the Fault lies that has binder'd the Consumnation of the Said Marriage? Says, That since the Physicians think it fitting she should be inspected, she consents there-Whether he really believes he is a Virgin, and whether he knows what Sort of Impotence it is that the faid Hubineau lies under? Says, She does believe berself a Virgin; as likewise that the said Hubineau's Impotency proceeds from Feebleness.

Here we see a Wise averring that she is a Virgin, and consenting to have her Person inspected. Upon this, another Sentence dated the 10th of March in these Terms:

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The CASE of

Upon the Petitioner's Request, we order ber to be wifited.

Thus you fee the Wife was order'd to be wilited upon her own Request, and not up-

on her Hufband's confenting thereto.

In pursuance of this Order, the four Searchers who had visited the Husband, and two Matrons respectively nominated by each of the Parties, proceed to the Inspection; and thus the Searchers are in Number six. Four of those six find for the Virginity of the Wife, and give their Opinion, that the Marriage was not consummated. Two others club together a-part, and draw up a separate Report in these Terms:

We cannot infer that the said Hubineau ought to be declar'd utterly impotent, since in the Inspection which we have made of his Person, we found the Parts, destin'd to Generation, to be so well conform'd, as to give us Reason to believe, that if there is any Dissoulty in substilling the Functions of Matrimony, it may be imputed not to a Depravation or Abolition of the Action of Marriage, but only to a Diminution thereof; and that this Diminution may be cur'd by an Increase of conjugal Love on both Sides.

Tho' by the Terms of the Report, Hubineau's Conformation was regular; and tho' the Promoter required the Searchers to explain themselves, yet Monsieur Chaplier, then Official, assisted by M. Pierot, M. Boucher,

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Curate of St. Nicholas du Chardonet, and Mr. Pivant, Deputy, M. Chaplier, Hay, on the aft of April passed his definitive Sentence,

declaring the Marriage null and invalid.

Prom this Sentence, the Husband appeals to the Parliament as aggrieved, and at the same Time gives in a Retition, and defires that they would take it into Consideration, that the Report of the Matrons and Surgeons (transcribed as before, the last of the two) was not sufficient to prove the said Hubineau an Impotent: He farther alledges, he is not an Impotent, and prays, that they would order him to be viewed and wifited by such smooth surgeons as the Court shall appoint for that Purpose, &cc.

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Pray, Gentlemen, observe the Spirit of this Petition; you will thereby fee, that Hubineau turns into Reafons of Grievance the very Reasons which were made Use of for the Marquis de Gesures. He alledges the Report of the Matrons and Searchers who visited his Wife, because therein he finds two of those same Searchers bearing Witness to his good Conformation; he pretends at first, that that Testimony is not fufficient; but in Case it is not sufficient, he prays a new Vifitation, not of his Wife's Person but his own. And why a new Inspection upon himsels? Because he suppofes that it is a Grievance and an Error to judge of the Hulband's Impotency, by vifiting

siting the Wise. Tou must not (says he) feek for the Proofs of my Condition in her, but in me. Tis my Person, and not her's, must clear up the Doubt, as to my Potency or Impotency. The very Searchers who inspected my Wise, after they had visited me, found nothing in me to make them doubt of my Potency; but if they did not fully explain themselves in Relation to my Person, I consent to go thro a new Visitation; and not only consent to it, but be seech it.

What Event had this Appeal? The same with all others of the like Kind. The Parliament declar'd him not aggriev'd by that Sentence which had dissolved his Marriage upon the Visitation of his Wife; and as for the Hussand's Petition tending to a new Visitation of his Person, he might prefer one, and sue it out, if he would, thereby shewing that such Petitions were admitted on-

ly in the Ecclefiaftical Court.

And now the Consequence deducible from this Decree, is equally simple and decisive for us; for, in short, it adjudges that an Official may, without aggrieving any Body, dissolve a Marriage upon a Proof resulting from the Visitation of the Wife, even the the Husband be exactly conformed, and the the Visitation was required and befought by the Wife alone, independently of the Husband's Consent.

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We must now proceed to the third Example, namely, that of le Mercier, in all Things like to that before mention'd.

Le Mercier's Wife began with a Petition, to be allow'd to prove her Virginity, supposing that Virginity being once prov'd, would imply the Proof of Impotency in the Husband, for to that Effect were the Conclusions of ther Petition, and such the whole

Spirit of it.

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The Husband being summon'd before the Official of Rennes, throws in an Appeal against the Summons: But afterwards he withdraws his Appeal; and upon the withdrawing thereof, a Sentence passes, dated the 7th of Odober, 1702; which gives him Leave so to do, and which consequently orders that the Parties shall proceed. Accordingly they do proceed; the Husband is inspected, and the Report of his Inspection concludes thus: We say that it is difficult to judge observe be is potent, and that it is necessary we should inspect bis Wife.

Here we have another Example that the Searchers may, without a Crime, and without encroaching upon the Judge's Office, propose, of their own proper Motion, to have the Wife visited. The Report is follow'd with an Order to hear Counsel upon the Question, whether the Wife shall be visited. In short, after the Difficulty had been amply discuss'd, the Wife insisted to

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have her Person visited, and the Hulband hindering it, an Order is made for the Wife to be inspected, and that the Searchers shall make their Report whether or no she has been defluiver di avorq of b violle ed of

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Upon this the Hulband appeals to the Parliament of Rennes, who declare against admitting the Appeals and why not admit it, slay the Marquis de Gefores's Advocates? Because, add they, the Husband had consented to have his Wife visited; and after fuch Confent, he could no longer complain of the Sentence which order'd her to be wisited This indeed is a very fine and ingenious Conceit, but has nothing for its Foundation but the Dreams of our Antigonifes; for there is not any where the least Trace or Foot-Step of Sich imaginary Conferts. They have quoted upon us an Act of the 7th of Ottober, 1702; but would you know, Gentlemen, what that Act was? Tisan Order which gives Leave to the Hul band to withdraw his Appeal, and this is what they would put upon sussfor a confenting to the Wife's Inspection, england

Now if after this I should be asked why
the Parliament declar'd that his Appeal
ought not to be admitted; I answer, that
so far forth as I can judge of it, it was be
cause the Husband had borrow'd his Ground
of Appeal from that old Appeal of his
which he had desisted from. I have, said
he,

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he, by an Appeal attack'd the Competency and Jurisdiction of an Ecclesiaffical Judge: Tis true, I afterwards departed from that Appeal, but Juch Departure could not establish the Competency and favisdiction of an Official; therefore, before any Proceedings bad pass'd in the Officialty, the Point of his Competency ought to have been settled; and this not having been done, tis consequently a Grievance.

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Upon this the Parliament decides, that when once a Person has withdrawn his Appeal, he has not a Right to complain (for his own particular Interest) of the Judge's allowing him to withdraw it. Now if any publick Person, if the Attorney-General had complain'd, he might have prevail'd; but the Desender of the publick Interest being silent, a private Interest that had withdrawn its Appeal, was no longer of any Weight. And this undoubtedly was the Motive of the Parliament's declaring against its Admitsion, I say undoubtedly, and have Reason to say so; for otherwise tis imposfible to reconcile their Declaration with the Proceedings which are taken Notice of in the Official of Remes's Sentence. For to pretend, as our Adversary does, that the Husband consented to the Visitation of the Wife, and that twas that Consent which ocasion'd the Parliament to reject him, is not only feigning what never was, it is eigning what could not be. The

The Reason is this; there had been no other Question agitated between the Husband and the Wise; but whether the Wise should be visited. And by this Means the Husband's consenting to the Visitation, would have decided the Suit; which would have oblig'd the Judge to have mention'd it in his Sentence, and to have said that he had order'd the Visitation by Confent of the Parties.

In short, after the Parliament's Decree, the Wife was visited, and the Report of her Visitation concluded with these Words, That the Husband had not been able to accom-

plish the Destoration.

It were to be wished we might here transcribe that same Report, because it gives an exact Description of the Tokens of Virginity. But Decency forbidding us to expose such Circumstances to the Eyes of the Publick; I shall content my self with pointing to it, and conclude the Discussion of this Example with this additional Observation, that upon the Proof of Virginity, the Wife was freed from her Husband, and so effectually freed, that she lives now with another Husband.

The fourth and last Example, is, that of the Sieur Verdin, whose Marriage was dissolved in 1711, by a Sentence of a Counfellor of the Parliament of Dijon, foreign Official of Langres. This Example require

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Mademoiselle de MASCRANNY. 379 no long Differtation, because it is true, that the Sieur Verdin thinking, as all other Impotents do, to save his Credit by a sham Confidence, declar'd that he did not oppose either the Inspection of his own Person, or that of his Wife; but can it be from thence inferr'd, that tho he had not confented to it, the Judge would have made any Bones of ordering his Wife to be inspected? Is not fuch a Way of Reasoning a manifest So-philm, post boc, ergo propter boc.

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How! Because the Husband made a Virtue of Necessity, and confented to a Proof which he could not hinder, does it follow that he might have hinder'd it if he had opposed it? Surely, if this be fo, a Man that is a Debtor in a just Debt, and who makes Tenders of Payment, could not, if he had not made such Tenders, have been forc'd by Law to pay his Creditors. Such is exactly the fallacious Syllogism of our Antagonist: But to return to the Prin-ciple. The Necessity of the Husband's Confent, is a Chimara equally contrary to to Law and Reafon; a Chimæra grafted upon another, namely, that the Inspection of the Wife is let aside as well as the Congress. And from these two Chimaras accumulated, a third is produced more whim-fical than the other two. For they conclude, that the Proof by Inspection being become unlawful, nothing but the Confent

of the Party concern'd can warrant the Usage of it. A Reason which would like-

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wife prove that the Congress might still be used, if the Husband would consent to it.

By this its plain, that there's no kind of Paradox that the Marquis will stick at. And what may we not expect from his Partisans, after a certain Writing, which is spread abroad without the Author's Name; a Writing which feems only defign'd to inform the Publick, that Monfieur de Gespreis Canfe is already in the Hands of Quacks, and that the Phylicians give it over? We than't take notice of the Quack's bringing in one Biel, one Koninck, &c. to speak in the Cause. But that he should corrupt the most notorious Texts, such as the Chap. Debitum de Big; that he should missepresent the Propositions of his Adversaries, as he does every Moment; that he should refume the old confuted Illusions, without troubling himself to answer what has been faid to refel them: This is what belongs to none but an Interloper in Law, who is bold enough to speak what he does not understand, and at the same time wife e nough to conceal hunfelf under the Malque of an anonimous Author.

This Ignotus has caus'd to be printed at the End of his Book, an Extract of leven Reports of Sarahan, and Extract of leven Reports of Searchers, relating to leven particular Persons, du But, le Page, d'Amous,

Mademoiselle de Mascranny. 381
Royer, Totin, Grenet, and le Bret. He brings
them all in for Examples, that, in the
Science of Searchers, Conformation decides
the Pointof Impotency. Du But, says he,
and the others save themselves by means
of their regular Structure; why may not,
the Marquis de Geswes have the same Pri-

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This were well enough, if it were true; but after that Madam de Gefores's Advocate has confuted all those Examples minutely in his first Replication; after he has, by a particular Discussion of each of them, discover'd how the Marquis's Advocate abutles them, in there, after this empty Phantom had been, de novo, confounded, and put to slight in the general Answer, there was no need to revive such shallow Reasonings, or at least he ought first to have answer'd those which had been advanced against them.

We shan't take any Notice how the Marquis's Advocates slur over the Arguments of their Adversary, but yet in common Honesty, at least, they should forbear to invent any thing; and yet the assorptions Author does not forbear it. He has the Assurance to aver, that among the six or seven Examples by him cited, there are four wherein Virgin Wives were concern'd; Wives who offer'd to make Proof of their Virginity, but were not regarded, because

good

382 The CASE of malall good Conformation prevail'd above all other Proofs.

And yet nothing of all this is true; we have told them to twice, and are forc'd to

repeat it a third Time.

Not any one of those Wives, unless perhaps le Bret's, offer d to make Proof of their Virginity, not any of them pretended to be a Virgin, not any of them demanded to be inspected. One of them was a Widow at the Time of her Marriage with the pretended Impotent; another of them married again of her own Authority, du-ring the Ablence of her Husband, whom the accused of Impotency. Two others confess d, that the Tokens of Virginity no longer remained within them; and as for the two last, it was manifest from the Confession of both Parties, that there never had been Consummation. So that the Search after Virginity would have informed them of nothing more than what they knew already. All this is proved from the Interrogatories of the Parties, Copies of which have been taken out of the Office, and communicated to the Marquis de Gelvres's Attorney. Thus in none of these Cases was it possible to judge of the Hulband's Impotency by the Wife's Virginity.

Aves who offerd to make Iron of their inginity, but wer a not regarded, because Rood

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Mademoifelle de MASCRANNY. 383

As for le Bret's Affair, nothing is less a-kin to our Cause, than the Dispute be-

tween him and his Wife.

The Wife taxed the Husband with an Impotency of Weakness the Husband taxed his Wife with the Impotency of a vicious Organization: This Impotency was reciprocally charged, and confequently it was plain the Marriage never had been confummated. But then the Question was, which of them was the Occasion of its not being confummated. The Husband being visited, the Searchers declare they cannot djudge him impotent before they examine he Wife: The Wife being visited, they onclude, that the Husband is impotent, out not absolutely so, but only relatively, with respect to his Wife alone.

These are the very Words of their Reort; (tho' the anonymous Author has est them out in his Extract) This does not ifer us to doubt of the Said le Bret's Impoency with regard to the faid Mary Louisa Bu-

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As by this last Report the Husband was ply attainted of a relative Impotency. from therice concluded, that the Judg ent which had been given of his Conin the Searchers could not peffibly know lat there was a relative Impotency in im. To judge, says he, of a relative Impotency.

tendy, the fame Persons must have examin'd both the Sponfes. Now of the fix Searchers who have declar'd me relatively Impotent upon vifiting my Wife, three san none but my Wife, and did not fee me at all; consequently incompetent Judges

of a Relative Impotency.

Upon this, a new Report is orderd, new Searchers nominated to infreet the Husband a fecond Time Now, in the E vent of this feedend Visitation, the Searchers fay, that there was nothing in the Husband's Person that could hinder Generation. A very extraordinary Expression, but which shews, that he had given the Searchers other Tokens of Virilley than bare Conformation; for elfe they would not have gone to far as to have own'd, that he had in him the generative Faculty, which is not necessary, even to the Validity of a Marriage midous sha oda) in

In these Circumstances, the Official seeing a married Couple thus reciprocally acciffing each other of Impotency, without the least Appearance of any Impotency in either of them, and judging belides from the Interrogatories, that they were enragid against each other (for the Interio gatories give fuch an Account thereof as as would make one shake) the Official, I fay, in these Circumstances rejects their Demands for a Diffolution of Marriage; and to shew that he alcrib'd their recipro

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Mademoiselle de MASCRANNY. 385 cal Accusations to the Fury which posses'd them, he injoyn'd them to look upon each other as Man and Wife, and to live together accordingly.

What Consequence, after this, can be drawn from this Example, in favour of the

Marquis de Gesures?

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Does our present Cause turn upon any such Thing as two respective Accusations of Impotency, undertaken, on both Sides, upon Motives of Hatred? Has the Marquis de Gesures own'd, as le Bret did, that his Marriage was never consummated? Has he, like him, three Reports of Searchers, the first declaring, that they cannot adjudge him impotent; the second, that if he is impotent, his Impotence is only relative; the third, that there's nothing in him to hinder Generation.

Le Bret had all these Testimonies in his Favour; whereas, the Marquis de Gesmes has nothing on his side but Doubts, which lean much more towards the Negative than the Assirtative of Potency. Let him not therefore pride himself in drawing a Parallel between his Cause and that of le Bret. But it is high Time to proceed to the second Part, that of Triennial Cohabitation.

## Confutation of the third Proposi-

That in this Affair, trienmial Cobabitation is not a Thing to be overlook'd and despis'd.

TPon the \* Credit of the Decrees cited by Chopin, it was for a long Time believ'd in the Courts of Judicature, that the Ufage of triennial Cohabitation was banish das abusive, [i.e. a Thing not within the Jurisdiction of the Ecclesiastical Judge and all the Chirographers were of the same Opinion. But the Question being reviv'd in 1634, the learned M. Bignon undeceiv'd the Publick, and shew'd, that a Sentence of an Ecclefiaftical Court which Inbjects the marry'd Couple to a Probation of three Years, does only afford Grounds for a limple Appeal, not for an Appeal of Abuse. An Appeal of Abuse is in France an Appeal to the Parliament from the Sentence of an Ecclesiastical Judge who had gone beyond his Power.] Therefore I must agree, that the Triemium may be order'd without Abuse;

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<sup>\*</sup> These Decrees are cited in the Memorial upon trien wial Cohabitation.

Mademoiselle de MASCRANNY. 386

nor will I pretend, Gentlemen, to main-

what I maintain, is, that the Constitutions Laudabilem and Litters, one whereof did introduce into the Church, and the other has authoriz'd, the triennial Cohabitation; that these Constitutions, I say, are made for particular Cases, and that it is abusing them, to make general Rules of them; for this is the Rock which most cf those who judge of the Meaning of Laws by bare Theory, split upon. What was esta-blish'd for a special Case, and for Reasons peculiar to that Case, they make to be a general Principle, and introduce it upon all Occasions, without confidering, that there are very few Rules absolutely general; and that as to the others, it is with them as with a Suit of Cloaths, which is good for nothing unless it fits the Stature and Bulk of the Person who is to wear it.

But then, they'll fay, who shall teach us to diffinguish the Cases where the Trien-

nium may be us'd, and where not?

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I answer, that to teach us this, there's but one Master, namely Usage, or rather Experience; but for our Unhappiness, that Master is wanting to us. For the Triennium has been so little us'd, so little practis'd, that in the Registers of the last 50 Years of this Officiality, we scarce find one Precedent

Piggreig and Houngh

of a Husband demanding the triennial Co-

habitation, and the Judge ordering it.

I have already discussed the faid Example in the Memorial which I compos'd upon that Subject, and I shall speak one more Word to it in the future Part of this Replication. This we may now fay, that it is at least certain, that during the Course of half a Century the Example is single; and tho' the † Praisers of the triennial Cohabitation complain of its being exterminated by the Congress, the Example I speak of is prior to the Abolition of the Congress, for it was in Anno 1675.

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Since therefore we can learn nothing from Ulage, let us at least be taught by Non-ulage, which will inform us, that it is a very rare and very difficult Thing, to meet with Cases where triennial Cohabitation may be nfefully practis'd. And indeed if in 50 Years there happen'd but one Cafe, we ought, one would think, from thence to conclude, that it would be next Kin to a Miracle if that Cafe were now return'd

upon us.

But because they of the other Side may be fo scrupulous as to fay, there are Canons, there are Ecclefiaftical Laws, which cannot be abrogated by Non-usage, we will push the Examen of the Question home to this

t Tagareau and Hotman.

Mademoiselle de MASCBANNY. 389 this last Intrenchment, and examine wher ther this religious Timidity is as prudent as-

We can't judge of the Intention of a Law, otherwise than by the Text of that Law it felf, or by the Interpretation which is given it by the Usage in the Places where it is practis'd, nay, it would be dangerousto confult only the Law without the Ufage. For, as Bartolus fays, the Law without Experience is a crude indigested Sort of Food, which does more Hurt than Good. It is Experience, it is Usage alone, that operates the Digestion, and converts it into good and folid Nourishment. This is the Meaning of that Expression so frequent in the Writings of du Moulin, Leges in Schold deglutiuntur, in Foro digeruntur. Laws are swallow'd in the Closet, but digested in Court.

According to this Principle, let's first see how the Law speaks, and afterwards how the Usage of the Rota has interpreted it uccial Procle of Friend

We have two Texts, one whereof establiffies, and the other feems to confirm, the triennial Cohabitation; and those two Texts are those above-mention'd, the Chapter Laudabilem, and the Chapter Litters.

The last of those Laws is no Repetition of the former, 'tis a new Law made for a ingereffic procede tee inemien, as indeed is

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different Case: So it is of the greatest Importance not to confound the two Cafes.

The Chapter Laudabilem is made for a Man who is suspected, but not convicted of Frigidity, for a Man who confess he has not confurmated his Marriage, but who flatters himfelf that he shall confummate in Time. And thus much may clearly be inferr'd from the very Words of the Law, Requissfi quantum tempus indulgendum It naturaliter Fingidis ad experientiam copula nuptialis. Will you by those Words, naturaliter Frigidis, understand declar'd Impotents, Impotents convicted of Frigidity? If fo, why were they not instantly loss'd from the Marriage Bonds. For the Sequel of the Decretal tells us, that when Frigidity is once apparent, there's no more to be done but to declare the Marriage void. Again, will ye have those Words be understood of such Husbands as were accus'd and half-convicted of Prigidity by judicial Proofs? But in the Time of the Decretals, there were no judicial Proofs of Frigidity; for then they did not me to visit the Person of the Hufband. There was indeed at that Time a judicial Proof of Impotency, namely, the Inspection of the Wife. But then it must be supposed, that in the Case of that Decretal, they had begun with that Impection, and fo the Inspection of the Wife ought to precede the Triennium, as indeed is practis'd

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Mademoifelle de MASCRANNY. 391 practis'd in the Rota, as shall hereafter be ihewn.

Be that as 'twill: If in the Case of the Decretal, neither Husband nor Wife had been inspected, when the Pope oblig'd them to triennial Cohabitation, the fovereign Pontiff could not be inform'd of the Hufband's Frigidity otherwise than by his own Confession; and so the Expression naturaliter frigidi must be understood to mean those People who are dubious, who hefitate about their natural Condition, and who declare with their own Mouths their Scruples to the Church, and confequently confels they never confummated their Mar-

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This is not enough; it is not fufficient that those People hesitate; their Hesitation must be accompany'd with some Confidence; they must presume upon some future Capacity, and declare as much to the Church. This appears from the Term indulgendum sit, which supposes a Favour begg'd of the Church, upon the Foundation of an interior Doubt which the Church can't guess at. And what compleatly verifies this, is the following Expression, ad experientiam copula nuptialis; for thereby tis plain the Decretal is made for a Cafe where the Hufband prays. Time to approve himself, ad experientiam. And indeed, if he does not pray Time, can the Church presime. S 4

presume, that he who so far despairs of himself as to think that no Sort of Probation would be of any Use to him; can she, I say, presume that such a Man has any need to be try'd? This then is not so much a Proof introduc'd to inform the Judge, as a Trial demanded by the Husband, and granted to him upon an humble Confession of his past Impotency, and upon his hoping that it may be otherwise with him in Time to come.

Let us add to this, that the Chapter Landabilem supposes in both the Speuses the same Wishes, the same Desires; in a Word, a perfect Harmony of Wills; and this appears from those Words si nec tunc volueint cobabitare; this designates a common mutual Will; as do likewise those Words si ambo consentient, of si ambo fatentur. To conclude, the whole Run of the Text, from the first to the last, shews plainly, that it was designed for none but Persons equally sincere, equally resigned to the Commands of the Church.

Which likewise may be inferr'd from the Practick of that Text, as we are taught by the Glosses and Doctors. For the Church does not engage the marry'd Couple to the triennial Cohabitation, 'till after she has enjoin'd them to do, bona side, all that in them lyes, in order to arrive at uniting each others Flesh; nay, she requires them after the three Years are over, to make so

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femil Oath, that they have us'd their utmost Endeavours forto do. Thus the supposes in them a certain Uprightness of Intention, without which the Remedy which
she proposes, can't produce any Thing but
a very great Mischief, without almost the
least Hope of any Good resulting therefrom:

Here werke, there are a World of Conditions necessary towards making Room for the triennial Collabitation, in the Case of

an Acculation of Frigidity.

The Husband must own himself to be feeble, he must confess he has not consummated, he must promise himself some Relief from Time, and must declare so to the Church; (for if there's no Hopes of his Frigidity's going off, he would be in the Case of a prov'd Frigidity, and consequently in the Case of the Exception, so frigiditas prius probati non possit, To conclude, the Church must presume upon the Sincerity and Harmony of the Parties; at least, there must be no Grounds for fearing Violence on the Part of the Husband: Without all this, he is out of the Letter, and out of the Spirit of the Decretal Landabitem, and remains to examine the Chapter Litters.

The common Doctrine of the Canonists embrac'd by the Rota, is, that this Chapter was made only for such Impotencies as were suspected of Sorcery, among which are rank'd those which I have characteriz'd

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in Latin in my last Pleas, as dikewise those which have an Abhorrence for mone but a lawful Bed fellow, it any fuch there be I shall not give the Reasons and Grounds of this Interpretation. I shall content my felf with setting down (at the Bottom of the Page) an Account from what Store Houses I drew them "In some of which will be found the simulamental Principle of the Doctrine I just now laid down.

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These Authorities might be corroborated by an infinite Number of others, if Time would give leave; but since it does not, we shall only say, that two Brasons oblig'd the Dockors, and after them she Rota, to understand the Chapter Latterze of an Impotence caus'd by Sorcery. The first was, the Husband who own'd himself impotent towards his Wife, alledg'd he was not impotent to any other Woman; which is the true Character, of Sorcery. The second

Imocercias in cap! ult. de Frig. Hic convincitur, quod hac Decretalis loquitur de Maleheiatis, & dicitur Maleheium perpetutum, quod intra triemnium per exorcifnos & orationes non cellat. Rora, Decit 54. Non prefumitur Maleficium perpetutum, nifi pen triemalem Conshitationem. Rota femper fervavit & fervat dictam Conshitationem triennalem, quando agitur de Maleficio. Inducta est hac dispositio, ut peragatur prenitentia, & mediantibus orationilus, sequentationes acramentorum, sejunits & lacheymis, & peregeinationibus, Dei misericordia impetretur; & in issis terminis Maleficia intelligitur Textus in d. cap. Littere: Ancharantis on the first Chapter of Frigids. Decretalis Laudabilem loquitur de Frigidis, Decretalis antem Littere de Malesiciatis; idem Ancharantis de la Authorities might be corroborated by an infinite

The greatest Use, after this, of the Triennium, is to serve as a Touch-stone for discovering whether the Impotency proceeds from Frigidity or Sorcery, whether tis natural or accidental, perpetual or transient: For this Doubt often presents it self before the Rota, which suspects of Sorcery all those who like the Baron du Pont are furnish'd with the motive Faculty, the it ferves them in no Stead. Now as for fuch. they are try'd by a Cohabitation of three-Years; and if their Impotency does not go off in that Time, it is judg'd to be perpetual and incurable. This is the Reason why in in that Case the full Triennium is indispenfably necessary. It beng a Proof of the Perpetuity of Impotency, the Judge may not indulge them as to more or less Time. Tunc enim, says the Rota, tempus est de solemnitate probatoria.

But

ties; which is never done but in Case of Sorcery, according to the Canon si per sortiarias. For as the Church supposes Sorcery to be a Punishment for some Sin, so she supposes that Penance, in doing away the Sin, will put an End to the Sorcery. 'The otherwise with Frigidity, which is a perpetual and irreparable Vice of Nature, really penmitted by divine Providence, but doom'd by it to be permanent.

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Soto observes in 4 Sent. art. 34. Et quia illa Maleficia sapissime de criminum meritis oriuntur, admonet Ecclesia, ut corde contrito se in Deum convertant, precibusq; tam ipsi pro se, quam aliis pro ipsis, apud eum insistant, quod Frigidis non injungitur. But when the Husband has given no Tokens of Motion, or but feeble ones, as in the Case of the 14th Decision, it is not necessary that the Probation should continue three whole Years; because then there's no Suspicion of Sorcery, and it is a plain Frigidity. Now in Case of Frigidity, the Triemium is not rigidly observed. They only examine, whether the Husband has had a competent Time for acquiring, or else for fortifying the motive Faculty; and this Time depends upon the Judge's Discretion.

For this Reason, Tagareau, as great a Friend as he is of the Triennium, owns, [p. 116, 117.] that it does not take Place when the Husband has made no Shew of Motion. He likewise quotes in p. 109. a Passage of Prapositus, who says the same

in express Terms.

What's the Meaning of that Rule, which at first Glance seems to clash with Chapter Landabilem? I'll give you the Reason of it, and shew you how to reconcile it with the

Text of that Chapter.

Tis a Principle in Law, that there's this Difference between Questions of Law and Questions of Fact; the Judge is not Master of his Decision in the sormer, as he is in the latter: Facti quidem quastio in potestate judicantis est, Juris autem non ita.

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ons of Law? Because, such Questions depend upon general Principles which the

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Why is he more Master in Questions of Fact? Because, a Question of Fact depends upon the inward Conviction, or, to speak better, the Impression which the Proof makes on his Mind. Now, this Impression and this Conviction depend upon his Prudence.

When therefore the Business is to know, whether a particular Man is touch'd with Frigidity, as the Question is wholly a Point of Fact, the Conviction of the Judge is arbitrary; it depends upon his Insight, his Conscience, his Penetration, whence it comes to pass, that when he is convinc'd of the Frigidity before the three Years are expir'd, he ought then to reckon it prov'd; and in that Case, the Lapse of three Years is no longer necessary, because that is the Case of the Exception taken notice of in Chapter Landabilem, si frigiditas prius probari non possit.

To this Explication must be added a material Observation, contrary to what I advanc'd in my Memorial upon triennial Co-habitation. Being deceiv'd by the Authority of Hotman and Tagareau, I thought they did not proceed to inspect the Wife till after the three Years; but having since made a narrower Search into the Decisions

of the Rota, I find that the Inspection of the Wife us'd to go before the Triennium; and that after the three Years were expired, they judg'd of Confummation or Non-confummation no otherwise than by the Oath of the Parties, or that of their Kinsfolks, that is to fay, by the feptime manus. \*

This Order is already the only canonical one, fince it is that which is observ'd in Chapter Littera: But it besides carries with it a twofold Advantage. For if the Hufband confesses that he has not consummated, they discover, by the Visitation of the Wife, whether such Confession be sincere or a Trick contriv'd between the Parties. So is it for this Purpose of discovering Colhiston, that the Visitation is introdu'd in Chapter Littera: Vos verò, ne id confiterentur in fraudem, dictam fecistis inspici mulie igt Cafe, the Lapic of three Y imer

If the Husband affirms upon Oath, that he had confummated, they fee by visiting the Wife whether he's forfworn; and in that Case, the Jeptima manus of the Wife, which is practis'd at the End of the Triennium, prevails above the septima manus of the Hufband, because the Hufband is convicted of false Swearing.

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<sup>\*</sup> This is deducible from the Decisions, 6, 7, 14, and 16 of the Rora, Sanches 1. 7. Diffout. 108. n. 6. and Disput. 109. n. 16 and 17.

This shews, that the Practice of the Tie ennium contains more Mysteries than are to be learn'd by Books of mere Speculation

and Reasoning.

The Triennium is indeed a canonical Proof, a Proof approv'd of by the Church, but dangerous in its Execution; a Proof which requires the greatest Circumspection, and which ought not to be reforted to but when there's no other to be found. Let us now come to the Consequences which are deduceable from the Principles which we have been laying down, and then let's apply the the fame to our Caple OVNI

We are not yet in the Case of an Impotency suspected of Sorcery. The Impotency of which we accuse the Marquis de Gesvres, is a Privation of all Motion, and consequently a true and perfect Frigidity. This is the Charge in our Accusation, and this Charge is confirm'd by the Declaration of the Searchers who have visited the Mar-

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and and we are therefore in the Circumstances, where, according to the Principles of the Rota, there is no absolute Necessity for a Probation of three entire Years, and as we have already lived together two Years and nine Months, we may fay, that that is sromo fill up the three Years.

Triennalis non potest fieri abig; evidentistimo periculo peccati. Rot. Decif. 40.

more than enough to convince any reasona. ble Person, that if there ever was a desperate impotency, 'tis that which we com-

plain of.

The Marquis de Gefores did not only appear to the Searchers to be without Motion, but neither has the least Spark been kindled in him fince the Time of their Report.

The invincible Obstinacy with which he persists in hiding himself, shews, that his Condition is fix d and unalterable. For this Reason he now wraps himself up in his Virtue, as he did before in his Shirt. Let us join this Involution in the Shirt, to his Dread of being a second Time inspected; these two probatory Fragments will so well quadrate together, that they will shew ye a Husband, Gentlemen, who needs no farther Probation.

Be that how it will; if he had found in himself any Occasion for Probation, he should have pray dit, he should have ask'd Time, ad experientiam copula nuptialis. He was the best able to judge of himself. He should have set forth his Exigencies to the Church. The Church, who judges not occult Things, can't divine a Necessity which he kept to himself. He might have demanded the three Months which are wanting to fill up the three Years.

The only Hust and, who for the last 50 Years obtain'd a triennial Cohabitation, did,

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Mademoiselle de MASCRANNY. 401 for that Purpose, draw up a sormal Petition. The Sentence makes it appear; for thus it runs: And in Consideration of the said du But's Petition, we order his Wife to return to him, and to live with him for the Remainder of the three Tears, to be reckou'd from the Lay of the Celebration of the Marriage, according to the Holy Decree.

These Words in Consideration of, shew, that if the Husband had not petition d for Cohabitation, the Official would not have order'd it. Now, the Marquis de Gesvres is so far from asking it, that, at all the Hearings, his Council declares for him, and in his Presence, that he does not ask it; nay, there's a Minute enter'd down by the Clerk of the Court, that he does not ask it.

Tho he did aik it, 'twere not just to grant it him; because he has given no such Hopes of Virility as were given by that Husband

to whom it was granted in 1675.

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Do but look into the Interrogatory of du But's Wife, and you'll find, that just as much Reason as there was for bis Cohabitation, so much is there against that of the Marquis. We have explain'd \* the Reasons of the Difference in the Memorial upon Cohabitation.

Nor

<sup>\*</sup> The Reasons are, 1st, du But was so far from being without the metive Faculty, that by his Wife's Confession he could half-penetrate her. 2dly, The Searchers
Report

Nor can the Marquis de Gefores now pray for the Triennium, without exposing himfelf to be call'd by a very scandalous Name. He must begin his Petition thus: I cheated the Church, when I affirm'd I had confummated my Marriage. Tis no such Thing; I have not confummated it; but I pray Time to confummate it. And thus would the Marquis be convicted of Perjury out of his own Mouth.

Now, if once he's convicted of Perjury, where would be that Ground of Candor and Sincerity which the Church supposes in all those to whom she allows the triennial Co

habitation.

In fhort, take the Thing which Way ye will, the Inspection of Madam de Gesvres would be still the first Thing to be done The Rota is us'd to begin with inspecting the Wife; and this Usage is grounded on Reasons which here meet with a very just Application.

If the Event of the Inspection is not favourable to Madam de Gesures, there's an End of the Suit, and the Marquis de Gef-

vies is confessedly a Husband. We have explained the Realmost

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Report was in du But's Favour. 3dly, By the Interrogatories, du But's Impotency feem'd to proceed rather from a domestick D'fention, than from an Error of Nature; rather from a Vice of the Spirit, than a Vice of the Flesh Athly, In du Bot's Cafe, the Wife own'd, that the Evidences of her Virginity were loft; and that partly by fait Means, partly by foul, the Husband had done them away.

Twould be to no Purpose for Madam de Gesvres to talk as Madam de Langey did, and impute the Loss of her Virginity to Violence. She would not be minded, after having made it Part of her Charge that she's a Virgin; and after having afferted, as she again afferts, that the characteristick Tokens of Virginity are remaining in her, just as she received them from Nature, Thanks to a certain Continency of Hand which the Marquis de Gesures imposed on himself, that he might not set the Marchi-

one's his Wife an ill Example.

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Bethat as 'twill; the Inspection which I pray, is in this Case equally decisive for the Husband as for the Wife; and when the Partizans of the Manquis de Gefores go about to infuse a Belief that Madam de Geswes is prepard to elade the Judgment of the Searchers in Case it goes against her, they are forc'd (in order to colour their Chimara) to cut and maim my Expressions in the first Replication. (For this is their Way, when they have a Mind to make a Nofe of Wax, either of the Dead or the Living, and would have em fay what they themselves please.) They mutilate, they retrench, they transpose, they make that in Answer which was an Objection; in hort, they dispose of their Adversary's Work, just as if twere their own proper Goods and Chattels.

Now.

Now, if on the contrary, the Event of the Inspection proves in Favour of Madam de Gefores, if Madain de Gefores comes off with an authentick Testimony of her Virginity; then it will at least be certain, that the Marquis de Gestires imposid on the Church, when he fo peremptorily affirm'd, that he had confummated his Marriage an infinite Number of Times: And then would any Body doubt of the perpetual and habitual Privation of the motive Faculty? Would not his Frigidity be prov'd? And if any Body should be so hard of Belief as to doubt it, they at least could not doubt of his Swearing falle

And what Effects would his false swear ing produce? It would, Gentlemen, put duce two very confiderable ones. First, you could not deliver up Madam de Gefires to a Husband whom you had all the Reason in the World to diffrust; you could not, I fay, deliver her up to fuch a Husband without taking the greatest Precautions a gainst his indirect Attempts. The second still more effential than the first: The Mar quis de Gefores could no more be believ upon his Affirmation, if after the Time of the Cohabitation was elaps'd, he swore he has confummated a You must of Necessity be determin'd by the Oath of Madam de Gefores, and that of her Kinsfolks Goods and Chattels.

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Now.

But I'm in Hopes, Gentlemen, that your Conscience and Prudence will incline ye to believe, that the triennial Cohabitation was not meant for fuch a Cafe as ours.

It is a terrible and ineffectual Expedient; an Expedient which requires a certain Disposition of Hearts and Minds, which is not to be met with between a Wife that accuses, and a Husband that is accused, of Impotency; in Thort, an Expedient that has, by the Experience of many Ages, been found impracticable; and to close all in one Word, an Expedient almost always fatal, and almost never beneficial.

If, Gentlemen, you were forc'd by the law to take this Courfe, I should have nothing to fay; but you are not constrain'd hereto by any Thing whatever; nay, all Things conspire to turn ye from it.

I have shewn that the Chapter Laudabim was a Law, subject to the Prudence of he Judge; and will your Pridence, in this Case, suffer ye to sacrifice for the Sake of pitiful Residue of a Triennium, Will it, lay, fuffer ye to facrifice to a superstitu-us Formality, both the Modesty and Cause of a Virgin-Wife?

They may tell us, as long as they please, hat the Cohabitation is only allow'd of in order to bring an Eclipse upon Virginity. This is true, when there's any Room to hope 406 YVAThe CASE of mebali

that it will be eclips d by natural and law-

ful Ways. I'm tendent but onnoble

But what can ye expect from the Marquis de Gesvies, after what the Searchers have declard of him, after what all the World knows of him, after what he himself makes known, more by his Silence than Discourse? For, in thort, his Silence fays yet more than his Discourse.

Before I conclude, Gentlemen, permit me to speak one Word to a Book which is just now spawn'd by one of the Marquis's

Advocates. florels Insideral ita

This Book is nothing but a Repetition of old Errors. Twould be no difficult Thing to shew therein an infinite Number both of false Tenets, and false Principles, false Reasonings, and false Quotations; but wave all that, to come to the main Body of the Work.

What signifies his incessantly telling is that Conformation is enough, and that the Proofs of Virginity are uncertain? Are not o judge of that? Are you, Gentlemen, to decide those two Questions? Are they not Questions of Art? And are we so unhappeas to have any Experience that Way. This is all the Answer I have to make to a Volume of thirty Pages; and this Are swer is enough.

It is thrown in my Dish, that of all the Authors who have written of Physick,

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have quoted none but Zachias. I own, Gentlemen, I did not trouble my felf to confult any other, unless perhaps Dulaurent, Moriceau, and Ambrose Paraus, who, I found, were Favourers of the Opinion that Virginity is cognoscible: And this makes me have a Notion, that fince the Council of the other Side have quoted them falfely for the Marquis de Gesvres, they may have one the same by all the other Doctors of he fame School; and what confirms me in his Opinion, is, their not producing any ir'd precise Passage of them: They have mly offer'd me a Bead-Roll of Names, most f'em obscure and unknown; but they ook great Care not to specify the Books wherein 'twas said they had handled the mestion, much less the Chapter and Setion. Would they have me fight against lames, against Diamoir-brok, against Graof, gainst Vanmilichen, and a hundred others is in the carry the like kind, who are good for nothing ut to make part of the Catalogue of the lavis Salomonis?

What I could do, I've done: I consultd the Masters of the Art, who told me, hat all that can be gather'd from ancient ledicine, is, that the Hymen is no true oken, but that it is not the Hymen a saiden head is judg'd by; that, as to the odern Physicians, they do agree conerning the Existence of certain Tokens;

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but that it is a Question they dispute Pro and Con, whether those Tokens are infallible. Thus the Doubts fall only upon the Infallibility; and what divides the School into two Sects, is the one's ascribing to the said Tokens a physical or almost physical Certainty, while the other allows only a moral Certainty, that is, an experimental Certainty.

But whether moral or physical, it signifies nothing to us; 'tis enough for us to say after Hotman, [pag. 46.] Since the Councils and the Popes bane approved of the Inspection of the Wife, we cannot, neither ought we to gainfay it. It has likewise been received and

tolerated in all Ages.

farthermore, whether the Proof which shall result from inspecting Madam de Gestres will be certain or uncertain, it is the Searchers Province to determine.

But, say the Council of the other Side this can never be any Thing more than moral Proof; and moral Proofs are not admittable in a Question of Impotency. In the Proposition, whose Consequence is this The Church, who 'till now never judy'd Impotency but upon moral Proofs, has been guilty of as many rash Actions as she had dissolved Marriages on the Foundation of presum'd Impotency. The Doctors who have furnish'd her with those moral Proofs were so many sacrilegious Souse-crown

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The Officials who rely'd on their Credit, fo many blind Beetles and Reprobates. Our ly the Advocate of Monsieur de Gesvres, wifer than the Church, more religious than the Canonists, more prudent and more circumspect than all the Officials in the World, is come in the Dregs of Time, both to reform the Church, and to teach her Doctors, and to enlighten her Ministers.

For my Part, Gentlemen, I confess when in the Books compos'd for Monfieur de Gesvres, I found Arguments that led directly to fuch strange Consequences; when I met in 'em certain extravagant Paradoxes, certain Illusions, certain sophistical Fallacies, at which the Stomach of a Christian Lawyer cannot but rife, I confess I thought it my Duty not to spare them; and therefore I sometimes rattled them, and sometimes shew'd the Ridicule of them.

Monsieur de Gesvrer's Writer is offended at this: But may I not fay to him in my Justification, that if we would be respected, we should first begin by respecting our Now, the Respect which owe to our own felves, confifts not in a certain Gravity of Stile, an Enemy to every Thing that is piquant; no, it confifts in avoiding to protect Error, and especially an Error that oppugns Principles

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When Monsieur de Gesures's Advocate shall respect himself in this Manner, I shall be one of the first to pay him the Homages that are due to his Merit.

BENARD, Proctor

Decides, and to enlighten her Ministers,

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## Third and last PLEA

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### Madam de Gesvres

TEZMIA ADA ADELIANCE

# Mons. de Gesvres,

Concerning the Report of the second Inspection of the said Monsieur de Gesvres.

Gentlemen,

THE Purport of my present Motion is, that since by the Report of the Visitation of the Marquis de Geswes's Person, in pursuance of your Order, dated the 24th of last March, it appears that the said Marquis being a second Time visited, was T 2 found

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found to be in the same State of Frigidity as he appear d to be in, when he was first wisited; and that therefore, there is no longer any Reason to believe that he is not absolutely impotent: You will please to declare, that there has been no Marriage between the Parties; or at least, order, that my Client shall be visited by Matrons, or Midwives, to be nominated by the Parties, or else, by yourselves, ex Officio, in presence of the Physicans and Surgeons who inspected the Marquis de Gestures.

I now present you, Gentlemen, with a new Report. By the outward Appearance of it, it seems to promise nothing new; but, narrowly look d into, it leads directly to the Proof which I demand. This is what I hope to convince you of in a few Words, after you have heard it read.

But first, if you please, we'll begin with reading the Order which directed a new Inspection by Searchers deputed ex officio.

Gentlemen,

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THE Purport of my prefent Motion is, that fince by the Report of the Viscous and Gardina Warding and Gardina Report of the Viscous in pair under of your Cader, dated the sach of last March in aprents that the Said Marquis being a tecond it ime valued, was found

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# ORDER

Of the 4th of March, 1713.

Parties in principali, and before we determin upon their respective Demands and Requests, baving regard to the Motion of the Promoter, have order'd the Marquis de Gesvres to be visited anew, by such Physicians and Surgeons as shall be named by us, ex officio, who, in drawing up their Report, shall be oblig'd to express themselves minutely, concerning the Potency or Impotency of the said Marquis; and, in case of Impotency, to declare the Quality of such Impotency, according to their best Judgment, &c.

# The REPORT

Made in pursuance of the same Order.

R

WE bave, in an especial Manner, examin'd the exterior genital Parts of the said Marquis: We bave observ'd, that the said T 3 Marq

Marquis is advantageously provided with all his Parts, each of which has the natural Confifence, Colour, Dimension, and Figure. But because E ection accompanied with Firmness and some Duration, is also absolutely necessary towards proving the virile Power; and because we did not observe any such Thing in the Said Marquis, during our Inspection, we suspend our Judgment touching his Potency. We do not, however, infer, that there is Impotency in bim, from our not having Seen that Token of Virility; because it does not always appear, and there are Men, to whom the Presence of other Men is an Obstacle to the Appearance of Such a Token. Therefore we cannot decide concerning the Potency of the Marquis de Gesvres, it being impossible to judge of such sort of Things, without the Tokens indicative thereof. It were to be wish'd, that the Marquis de Gesvres could bave Ere-Sion in our Presence, at some other Time, and in some other Flace more favourable to bim; we might then decide concerning his Condition.

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What a difference there is, prima facle, between the Style of this Report, and that of most of the others which I have seen! In them there runs throughout a Vein of Simplicity and Brevity: In this there's nothing but Reasonings, Reflections, Wishes, and Defires. One would swear from the Strain of it, that the Searchers are discusfing, rather than judging, a Point of Impotence:

der'd, there appears to be in it mighty Mysteries, and momentous Instructions.

So foon as the Searchers had laid down for a Principle that they could not judge of Man's Potency without a sensible Demonstration of its principal Token; they thought it their Duty to point out to the faid Marquis the Methods and Expedients, by which he might exhibit that Token to them. For this purpose they lay aside the Language of Judges and Searchers; and talk to him like cordial Friends; they officiously give him their Advice; to the end that such Advice might contribute either to win him the Cause, in Case he follow'd. it with Success, or to convict him of Impotency, in Case he declin'd following it. If me judge you, said they to him, by the Rule in quo statu te invenero in eo te judicabo, you must be condemn'd; for you're in a State of Reprobation: But, because you may tell us that your Hour is not come; because you may say, that a Master of an Office and four Searchers, are no very proper Objects to put Nature ist a good Humour, we are willing, for this Time, to accept of that Excuse; so, not being able to adjudge you potent; on the other hand, we abstain from declaring you impotent: However, if you will follow our Advice, we will tell you what you shall do. You shall call us into your Antichamber for a certain Number

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ber of Mornings together. During which Time, at some commodious Hour, and within the Privacy of sour Curtains, you shall wait for that savourable Glance of Nature's Eye, which she never long resuses to Persons of your Age, who are not entirely under her Displeasure: And when that happy Moment shall be come, we will be in the Way, and ready to be Spectators and Judges of the Alteration she shall have wrought in you.

This is undoubtedly what the Searchers meant, when they said, It were to be wished, that the Marquis de Gesvres could have in their Presence, such an Erestion as they therein describe, even the they waited some more favourable Opportunity for it; and that then they could make a Judgment of his Condi-

tion.

What can be the Meaning of such a Wish as this in a Report? Are Searchers called upon to form Desires? Is it their Trade to Wish; is it not rather to Instruct? If then, our Searchers are turn'd Wishers, their Wishes must be instructive. Now its plain, that all the Instruction that can be derived from their Wish, is that which I just now took notice of: Therein, therefore, consists the Fruit which we are to gather from their Report.

In the next Place, Gentlemen, pray take notice that that Instruction is two-

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The first Part of it is directed to the Marquis de Gesores, and the next to You.

To the Marquis de Gesures, they say: if, as you pretend, Nature has given you the Capacities essential to a Husband, you would do well to follow our Advice.

To You, they say: Gentlemen, if Monfieur de Geswer does not follow our Advice, you may depend upon it, he has not the Capacities necessary to a Husband: And in this, who can but admire at the Wisdom of the Searchers, who, to discover Impotency, make use of the very Obscurity with which Impotency covers itself.

Tis wonderful, likewise, with what Art they lead you to the Proof which I demand; that is, to the detecting the Hulband's Impotency by visiting the Wise.

Why, think ye, did they insert in their Report, the Notion which savours so little of a Searcher: That there are some Men, with whom the Presence of other Men abstracts the Appearance of that Token which is manting to the Marquis de Gesvres?

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Surely, it was not to induce you to commit the Inspection of the Marquis de Gestares to Persons of another Sex. They did it, therefore, to let you know, that as he will always be inspected and examined by Men, there never can be a persect Conviction of his Condition setched from the said Inspection of his Person, unless you add

add thereto, the Infight that may be gain'd from the Person of the Wife.

In the next Place, has the Marquis de Gefores made any use of the Lesson which the Searchers taught him; has he put himfelf in a Way of spreading forth in their Sight the Donatives which he boafts he has received from Nature? You know whether he has or no, Gentlemen, you who have given him three Months Leisure to make Preparation for fuch a Spectacle.

Instead of shewing you what Nature had given him, he still brings you nothing but Reasonings about what she ought to have given him: This is manifest by his presenting you the next Day after the Report, a new Petition, which gives Indications more of his Despair than his Confidence. For the Purport of it is to this Effect; that fince by the new Report it appears he is impotent, you would please to reject my Client from ber Demand to have her Marriage declared null.

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I don't mean here to dispossels him of that Notion, viz. It appears by our Report, that be, the Marquis de Gesvres, is not impotent. 'Tis an agreeable Dream which pleases Him, and does no body any hurt. So tis but just to leave him in the Enjoyment of it: But I fay, that if he did not dream that he faw in the Report what he pretends to find in it, he must necessarily mean, that by the Report it does not appear

Mademoiselle de MASCRANNY. 419
pear he is impotent; as indeed the Report
does equally abstain from judging him impotent, as it does from judging him potent:
But there is a vast Difference between saying, Impotence does not appear by the Report,
and saying, that by the Report, it appears
there is not Impotence. This last would utterly exclude Impotency, and thereby establish Potency; whereas the first, which
alone is true, leaves the Potency and Im-

potency in suspence and doubt.

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Præ-supposing, therefore, that Monsieur de Gesvres meant to let you understand by his Request, that by the Report, he was: not convicted of Impotency, it is easy to fee, that the Foundation which he gives to his new Motion, is no other than an old Argument which he rakes up from the Shipwreck'd Remains of his former System, which centre in these following Propositions: That in Accufations of Impotency, the Wife is the Plaintiff; that it lies upon her to prove the Point which she lays down for a Poundation of her Complaint; that she ought therefore to make out the Husband's Impotency by a real and Physical Proof, derived from the very Person of her Husband; that otherwise she is to be thrown off of her Demand, by the Rule, Actore non probante, vincit reus; that here Madam de Gesures cannot prove the Impotency by a real and physical Proof, resulting from the:

the Marquis's Person, since after two successive Inspections, the Searchers concluded their Reports, by declaring, that they knew not what Judgment to make of him; and that consequently all that remains to

be done, is to reject her Complaint.

To this wonderful Argument, which is only a Quirk of Law, I answer in the first Place, that we must cut off this fundamental Proposition, namely, that all the Proofs of Impotency are to be fetch'd from the Husband's Person. For it is what is taught by no Text, Gloss, Doctor, Canonist. So far from it, there is neither Canon, Canonist, Gloss, nor Doctor, but have taught the direct Contrary: Therefore, I utterly deny the Maxim.

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I grant, indeed, that the Wife is to prove the Point of Impotency, fince it is the fundamental Point of her Demand; but then the Husband is to prove the Point of Potency, fince that is the fundamental

Point of his Defence.

For if by the Rule, Actors non probants, vincit reus, every Plaintiff who does not make out his Complaint, ought to be cast; by another Rule, viz. in exceptione Reus station, every Defendant, who does not prove his Defence, must necessarily be condemned: Why so? Because, when he Defends, he is reduced to the Condition of a Plain-

Mademoiselle de MASCRANNY. 421 a Plaintiff, 'tis he must prove; în exceptio-

ne fit Actor.

This being taken for granted, Madam de Geswes afferts, that her Husband is impotent: This is the Point upon which the grounds her Demand to have her Marriage declar'd Null: This is what she says, and what she offers to prove.

Monsieur de Geswes opposes to her, by way of Desence, that he is potent, and so potent, that he has consummated his Marriage an infinite Number of Times; He, consequently, is obliged to make out the Point of Potency, as the Fundamental

Point of his Defence.

I grant, could he prove his Potency, he would exclude me from proving his Impotency: But as he has not hitherto put himself to the Trouble of proving his Potency, I infer, he cannot hinder me from proving his Impotency.

Of all the Proofs that were ever invented for the Difcovery of Impotency, the Ufage of this Kingdom has retained none but the Inspection of the Husband and

that of the Wife.

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By the former, the Husband proves his Potency, and thereby repels the Reproach of Impotency, thrown on him by his Wife. By the latter, the Wife proves the Impotency, when the Husband demurs, or refuses to prove his Potency; and then the Proof

Proof.

Proof which the Wife's Person furnishes, is an infallible Proof, because it is warranted, not only by the Condition the Wife is in, but likewise by the Impossibility the Husband is under to shew that he is potent; a Thing which is never impossible

to any but Impotents.

Holding therefore to these Principles, which every body sees are incontestible. I say, to Monsieur de Gesvres; I am Plaintiff, it is true. I am to prove the Impotency; that likewise is true. But how? unless by the Proof that is in myself; and this Proof I am ready to produce. Will you hinder me from making use of it ? Do you then yourfelf produce the Proof of Potency, which must be in You if you are really potent. I find in myself a Proof of your Impotency, exclusive of Potency : I am ready to give it in Evidence. You pretend for your Part to have in your Person a Proof of Potency, exclufive of Impotency : Out with it then, and in a Word, make Proof of your Potency by your Person, or suffer me by mine to verify your Impotency.

What Answer can be made to this Argument? That which renders it yet more irrefragable, is, that as Potency manifests it felf by exterior Signs in all the Subjects where it exists, it is impossible it should flixes to prove his Potency s and then the

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Mademoiselle de MASCRANNY. 423 exist in such Subjects where it never manifests it felf. Wife outering herfelt to the

Tell me not therefore any longer, that it does not appear by the Report that you are impotent, and that that's enough for you; for I answer, that it matters not any Thing that the Searchers avoided to declare you expressly impotent, if you your self declare your felf to; and if in avoiding to shew your Turpitude, you reveal your Turpitude, (here the Word Turpitude is put in a Scripture-sense, that it may not be taken in ill Part.)

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I answer you likewise, that when the Searchers bid you shew Erection, they con-demn'd you if you did not shew it. They made you Judge in your own Cause, they put your Fate into your own Hands; after which, would it not be a very unhappy Thing for you to betray your Cause if it be good, and to take Pleasure to make your Fate miserable when you your self are

Master of it? and fay, conceal as much as you please the Proof of Tu pitude which is in you; but you shan't hinder me from producing that which is in me, especially fince that becomes a convincing Proof by

your refufing to produce yours.

For this is what I would beg of you to consider, Gentlemen, and always to take gnols now in Hand, and precisely made a

along with you: a Hulband relifting: a

Wife offering herfelf to the Proof. I if all

Those two Objects ought always to walk together; for tis their Confunction that makes their Strength, because they have between them the Relation which two Effects proceeding from the fame Cause have. Why does the Husband withdraw his Pefon from the Proof? Because he is sensible of his Impotency. Why does the Wife offer herself to the Proof? Because she knows herself to be a Virgin, and because her Husband's Impotency is the Reason of her Virginity. Thus these two Effects meet together in Impotency, as in their Source and common Cause, which gives so thorough a Detection to Impotency, that it would not be more certain if it fell within the Compass of the Senses; for how can any one doubt of a Caufe, when its two principal Effects are apparent?

Tho we have already faid it several Times, we will not be afraid to repeat it, fince it is a fundamental Reason: The Offer made by Madam de Gesures to prove her Husband's Impotency by her Person, is no new, fingular, unheard of Offer. 'Tis offering of a canonical Proof, a Proof authoriz'd by univerfal Usage, and by the constant Practice of all Ages and Places; a Proof, in short, that is precifely instituted for the Case now in Hand, and precisely made a-

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gainst Husbands well conform'd. For as to the Non-conform'd, they are already judg'd, jam judicati sunt, and there needs no Proof against them, since they carry in themselves the visible Character of their Reprobation. Now this being so, why should Madam de Gesures be resus'd a Relief which the Canons and the Custom hold out to her; a Relief which was devis'd only for the Case in which she is.

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The Partisans of Monsieur de Gesvres begin to feel the Force and Invincibleness of these Reasons. So long as their Doctor, and, which is worse, Reformer of the Law, believ'd he should make his Paradox go down, that Conformation was enough; to long as he flatter'd himself with the Hopes of getting the Canons corrected, they thought the Caufe could not be judg'd expeditioufly enough. But when they faw their Maxims knock'd o' the Head by the Pleading of Monsieur the Promoter, condemn'd by your Sentence of the 4th of March, which, maugre the good Conformation, order'd a new Inspection; in short, profcrib'd and anathematiz'd by the unanimous Suffrage of the four last Searchers, who therein sticking to the Principles of the four first, expressly declar'd, that Conformation concluded nothing; when, I fay, the Favourers of Monsieur de Geswres saw their System routed, then they plac'd all their Safety in retarding

retarding the Thing, and in flying the

One of their Stratagems for gaining of Time, was to feign in Monsieur de Geswa a tardy, flow Nature, which waits 'till Years bring on that Strength and Agility, which in herself she wants the Principle of. Who knows, fay these Speculators, but that there is in this young Lord a Bud which stands in need of five and twenty Years to ripen it? For my Part, Gentlemen, I confess I always look'd upon this Notion as an Amufement of the Tea-Table, where the Imagination takes fuch ftrange Liberties; and for this Reason I always despis'd it, tho' twas grown very frequent in the Mouths of a great many People; but because the facred and pious Timidity of some religious Men may be afraid even of the Phantoms that proceed from the Licentionshess of Conversation, you'll give me leave, Gentlemen, to drive this Apparition away with one Puff or two at least.

The Course of Nature, and the Time she takes in her Operations, are only discoverable from the sensible, daily Experience which Men have thereof. Now, this same Experience teaches us, that at sourteen Years of Age the matrimonial Capacity begins to break out. For which Reason the Church admits Persons of that Age to

the Sacrament of Marriage.

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It is true, there are some slow lagging Natures: but even their Tardiness extends not beyond sifteen, sixteen, or at most seventeen. And therefore the Civil Law has six'd compleat Puberty at eighteen, as a Period after which Nature may indeed add some Augmentation to her Donatives, but not grant any new ones, or create in Mannew Faculties.

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Such are the Rules received by the whole World, equally admitted in Physick and in Law, taught by all the Canonists, but principally by Panormitanus and Hostiensis, upon the Rubrick, entitled de dispons. impub. and lastly, confirmed by above five thousand Years Experience; nor can it be proved by any Example, that this Experience ever fail'd.

People spring up but Yesterday, who hammer out a System of the Brain, who describe Nature to be slothful, the Humours stagnating, and waiting for the necessary vivisying Seed, which is concocting either in the Liver, or in some other Kitchen which they place I know not where. They talk as if they had seen every Thing they speak of: But examine this Phantom near-hand, you will find that it consists in nothing but in Images painted by the Fancy; and that by often representing them to you, they endeavour to make them so familiar

familiar, that you may take them for Realities; which is the fame Thing, as if by frequently setting before your Eyes the Figure of a Centaur, they meant to create a Doubt in you, whether such a Species of Creatures were not possible a boing

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But let us suppose these Centaurs to be possible; let us suppose, that Nature can be be so ill a Pay-Mistress, as not to pay 'till five and twenty Years a Debt that was due at fourteen, or, at farthest, seventeen or eighteen; it will, at least, be granted me, that it cannot happen without an Irregula-

rity next kin to a Prodigy. The sale monu

Now I alk feriously, whether the pretended Poffibility of a Prodigy ought ever fo little to fuspend our Judgment, and what Judgment can be given of any Thing if the Possibility of a Miracle stays us If we will believe Books, it may happen that a Girl may change Sexes, and be suddenly converted to a Boy. Jovianus Pontanus gives several Examples of it in his Treatise de Rebus Mirabilibus, as does likewife Peter Massy in his Lectiones; and Montaigne says, that such a Transmutation of Sex did happen in his Time, and in his Country, in the Person of a young Woman call'd Mary Germain. Must we therefore needs fear, that when we marry a Maiden the may afterwards become a Boy? And must we before we marry her, examine whether the usiliens?

Mademoifelle de MASCRANNY. 429 whether the feminine Condition is well confirmd? What Folly would this be; but yet this Folly would become rational, if in the present Case we were to fear the Peffibility of an Impotent's being transmuted into a Potent; for, according to the Laws of Nature, I'll is much eafier for a Girl to become a Boy, than it is possible for Impotency to be changil into Potency. The one is only a Change of Form, caus'd by a Change of Situation, whereas the other is a Change of Substance, which requires a Creation of a new Substance, that is, a Cast of the Hand of Omnipotence.

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Let us therefore drop all these imaginary Possibilities, all these Maybe's which may never be; let us frick to our Rules, fince they are form'd upon the Rules of Nainre; and therefore I answer those who say to me, Shew by Examples, that the Church has liffold d the Marriage of a young Man of one and twenty. Do your your selves shew, say I, by Examples, that she ever refus d to diffolve the Marriages of Impotents under five and twenty. It is not incumbent on me to prove my Thefis by Examples; or tis enough for me, that my Thelis is onformable both to the Course of Nature, fore and to the Rules of Law; it lyes on you, den who pretend not to be bound by thefe And lules; it lyes on you, I say, to make good nine he contrary Thefis, if not by Reasons and ther Authorities,

Authorities, (which is impossible) at least by Examples well warranted, and very numerous; for as for me, 'tis enough that the

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Rules are on my Side.

And now, let us follow the other Steps of Monfieur de Gesores; (for in my Opinion, in Questions of this Answer, we do not give sufficient Attention to the outward Conduct of the Husband, tho' by such Conduct may be easily known the inward Judgment he forms of himself; and such Judgment is, at least, as fure as that of the Searchers) I fay therefore, let us follow the other Steps of Monfieur de Gesures,

When he faw, that his Phantom of Potency in the Bud began to lose Credit, he then betook himfelf to Subterfuges. Some times a Judge is out of the Way, Some times a Counsellor is fick, sometimes that Counsellor had his Brief but last Night, then a Journey to Rambouillet, the Opening of the Campaign; all this he makes Ule of for an Excuse to avoid coming to the Merits of the Cause. By these Delays he nify' has manag'd Matters fo well, that now towards the End of July we are got no far on a ther than to a Hearing upon a Report of Court Searchers of the 3d of April; and my to fa speaking thus, is not so much to complain the 1 of his hanging off, for that's natural, as to he w hint to you, Gentlemen, the long Space in the of Time he has had to improve the Search and I ers

Authorities,

Mademoiselle de MASCRANNY. 431

ers Advice, and to give them that ocular Information which they wanted of him. Can you really think, that if it had been in his Power to give them fuch Information, he would have notify'd to us one after. another the Instruments and Petition which you are going to hear; for they are Pieces of too great Curiofity not to be made

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Anno 1713. June 23. At the Request of Mestire Joachim Bernard Potier, Marquis de Gefvres, living in the New-Street of St. Austin, at the Hotel de Tresmes, which he had made the Place of his Abode; I Peter le Counte, Tipstaff in the Chatelet of Paris, did notify and declare to Dame Mary Magdalen. Emilia de Mascranny, Marchioness de Gesvres, at the Place of her Abode, the House of Madam de Caumartin, in Michael le Comte-Street, by speaking to the Porter of the faid Dame de Caumartin, who refus d to tell me his Name, that the faid Marquis de Gesvres protests against all Proceedings which the Said Marchioness de Gesvres caus d'to be this Day sighe now mify'd in order to be argu'd next Monday up far on a provisional Demand by her form'd in the t of Court of Requests: Forasmuch as she is first my to Satisfy the Order obtained in the Chatelet lain the 17th of March, 1712, according to which s to be was to retire to the Convent of Calvary, pace in the Faux-bourg St. Germain: Besides, the reh hid Marquis de Gesvres is setting out for the ers Army

WINTE.

Axiny in Germany, his Regiment being commanded thither; and therefore protests and declares against whatever may be done by any Jurisdiction whatsoever, during bis Absence, and has left the present Copy. Sign'd,

TUOMAS Inflaturents and Peticion which

es And lower, and to the LEI COM TE.

at Conjusty not to be inade Anno 1713, June 27, At the Request of Mestre Joachim Bernard Potier, Marquis de Gesvres, &c. I, Peter le Comte, did declare ta Dame Mary Magdalen Emilia de Mafcranny, Marchionels de Gesvres, dwelling at the House of Madam de Caumartin, by speaking to Madam de Caumartin's Porter, who refused to tell his Name, that he protests and declares null all the Proceedings of ber a gainst bim, as well in the Court of Requests, as in any other Court. Forasmuch as she is first to satisfy the Order du Chatelet of Paris, dated March 17, 1712, according to which the is to retire to the Convent of Calvary, Fauxbourg St. Germain, from whence the withdrew herself upen Occasion of answering the Interrogatories in the Officiality; and to this End, I Summon'd the Said Lady in Manner above said to retire into the Said Couvent, and did declare likewise, that the said Marquis de Gesvres is preparing to go to his Regiment, which is commanded to join the Army in Germany, &c. Sign'd

SIMONT and LE COMTE

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### Mademoiselle de MASGRANNY. 433

### EFF EFF EFFF EFFF

To Monsieur the Lieutenant for Civil Causes, the humble Petition of Francis de Gefcis Bernard Potier, Marquis de Gefvres,

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TE.

Hat by your Ordinance dated, the 27th of March 1712, you order d, that Madam de Gelvres should be oblight to repair to the Convent of the Nuns of Calvary. In Execution of this Ordinance she was there some Time, 'till taking Occasion of an Interrogatory which the was to answer to before the Official, the went from the Convent, and never return a fince. This oblig a your Petitioner to prefer a Petition to you, whereby he desird, that the said Lady might be obligd to return thither again. She excused herself, under Pretence that he was sick, and could not be carry d thither. You therefore order'd, that the should be seen and visited by two Ibysicians, whom you nam'd ex officio, who gave their Opinion, that before the Lady was carry'd to the faid Convent, it was neceffary to wait, till the Month of March, when the Sun in his Return might give ber more Strength than he then had. Tour Petitioner haid till then, and much longer too; but feeing

She made no Preparation to return to the said Convent, the he has caused her to be served with two Summons in Writing for that Punpose, he is obliged to prefer this Petition to you, and prays, that you would be pleased to take Order therein, or else that your said Petitioner may be permitted to take her away, and carry her thither, &cc. Sign'd

RIGAULT.

Let her be cited into our Office the next Court-Day at two-a-Clock in the Afternoon. Sign'd the 18th of July 1713.

### ARGOUS FINE Come Intersectors which

Anno 1713. the 19th Day of July, by Virtue of the Petition and Ordinance bereon endors d, at the Request of the Marquis de Gestres, I Anthony le Moine summand the Marchionels of Mascranny, speaking to the Poster where she lodged, to appear next Friday at two a-Clock in the Asternoon before the Lieutenant for Civil Affairs, &c. Sign'd

Enlow Mees Prinion, that before the Lady

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to

Thus you fee what Pains Monsieur de Gesures takes to avoid a Hearing. Formerly he disputed with us the Glory of serving Summons; now he protests against the

Mademoifelle de Mascranny. 435
the Summons we serve him. Formerly
the War in Flanders was no Hindrance to
our prosecuting a Judicial War here; now
the War in Germany is a Reason for forcing
us to grant him a Suspension of Arms.
Formerly, it was no great Matter whether
Madam de Geswes was at Madam de Caumartin's House, or in a Garret of Calvary,
and the Progress of the Cause was not to
be retarded for that; now Madam de Geswes must be silenc'd, unless she repairs to

her Garret there to breathe her laft.

Does Monsieur de Gesures, (who, if his Cause were good, might win it at once) does he, I fay, pretend by this Dilatoriness to perswade People that it is good? Does he pretend to mimick the Hufband, by disquieting himself about the Place where his Wife is to Iye; and does he think that People will do him the Honour to take him for a jealous Man, afraid lest his Wife should abute her Liberty? No. no, the World is not to be bubbled at that Rate. Why then all these Bustlings, these Agitations, these Inquietudes? All mere Despair, tho' he sets the best Face upon it He has heard fay, that Marthat he can. riage is a Source of Suspicions, he therefore must act a suspicious Part. He sees that all Husbands receive the Rents of their Wives Fortune; he therefore must continue to do the like, and therein he imitates them

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A36 YUNATHE CASE OF SULLY

better then in any Thing elfe. For when he has attempted to munick them in other Things, every Body knows how he has come off. But whilst He thines at the Cpera, at the Play, in the publick Walks, and has at least the Consolation of hearing People say, Tis a thousand Pities, the mournful Marchionels de Gefwer, with all her Innecence and all her Vertue, is forc'd to consume herself in Obscurity in her Chamber, where the supports her Life by Art alone; and happy would it be, if even that Remnant of Life was not envy'd her, and in Danger to be industriously destroy'd by forcing her to change her Abode. Tis in your Breast, Gentlemen, to put an End to so many Grievances: they have lasted too long; nor will fuch upright Judges as you are incur that Reproach of the Scripture, Juftus perit & non est qui necogitet. to reice him for a jealous Man, afraid lest his stanovale Ming Many? No. . robord ", drain all to be bullings, thefe Agirations, shefe-Inquietudes? All mere Deficier, the he fets the belt Face upon it that he can. He has heard lay, that Marriage is a Source of Suspicions, he therefore officiacle a suspicions Part. He fees that Wires Force ea-be the lose must continue to do, the light, and therein le immatis them

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### Madam de Gesvres,

efiningAve provok d him nim in this Court by the most

# oblig a to fly to the

in the next Place remember, remelline Dis Had before this Hearing a great many Proofs of Monsieur de Gesurcis Impotency; but none of them all came up to that which I am furnish'd with from the Plea which lately came to my Hands, for, in short, what can you think, when you hear Monsieur de Gefores galling out from the Banks of the Rhine? Come on, inspell me, fearch me as much as you please. What, I fay, can you think of him, when vou-Tire

you hear him talking thus, after having upon the Banks of the Scine done nothing but cry cut, What figury all thefe Vistations? To what Propose all these Enguiries? I bave Confummated, is not that enough?

I beg, Gentlemen, that you would take this along with you; it above fifteen Months fince the first Searchers told him, We can decide nothing, because we do not see the Token which must determine us; which was the same Thing as if they had said to him, Shew us that Token!

Be pleas'd likewise to remember, that for above a Year, in order to oblige him to fatisfy the just Curiosity of the Searchers upon this Head thave provok d him and spurr'd him in this Court by the most urgent Challenges, so urgent, that he was fort did leave the Lists, and by a strange Kind of Defertion, oblig'd to fly to the Army.

In the next Place remember, that in this admirable Writing, which for fome Time his Friends have Heen To budy don's with, he plainty declard, not only to you, Genflemen but the wife to all the World, that they might wint him thirty times if they would, but they would always find

After this, call to Mind the inflexible Obstinacy with which he disguis'd his Concern at the Provocations of the contrary

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Mademoifelle de MASCRANNY. 439 Party, and despis'd all the Exhortations of his own. Let it not be forgot how he intrench'd himself in his Distinction between the natural and provok'd Motion, as if only the latter had been required of him; and as if a fensible and ocular Demonstration of the former had been abfolutely impossible.

Then present to your selves that plain, that eafy Expedient which Mr. Promoter propos d in his Presence for putting the Searchers, as one may fay, in an Ambutcade, and planting them as Spies of the natural Motion. Then follow his Steps and fee whether he has put this Expedient

in Practice

Marrani

Observe, in the last Place, that the new Scarchers having approvided this Expedient; and having, under the Appearances of a With artfully suggested to him to make Use of it, he shut his Ears to their same Convention. their fage Council, and neglected to comply with Desires which were so much for his Good.

And how has he spent the four Months which have elaps d fince the last Report? How has he spent them, I say, unless it be in contriving Subterfuges and Evasions, in shuffling us off, and drawing the Thing into I. into Length, 'till the opening of the Campaign open'd him a Way to the Army, and behroffs no Proceedings on his Part. Whatafforded him an Afylim against the Starch-

ers and their Visitations.

And now being in the Army, Gentlemen, you hear with what Courage he talks; he offers himself to all Manner of Proofs which you shall please to have him

undergo.

Is not this like one of those hectoring Bravos who creep into a Corner when the Enemy is near, and talk of nothing but killing and maffacring when he is at a Diffarce? This is undoubtedly the natural image of Monsieur de Gefores: He hopes by this Stratagem, if not to gain his Canfe, at least to gain Time: He fancies, that with this Offentation of a feign'd Intrepidity, he may induce you, Gentlemen, to order new Inspections, which will not be over in fix Months, and perhaps never; fince, in thort, it is not impediable but in the secret Resolutions of his Party, he is to be fent to some far diftant Place, there to wait till the Death of Madam de Gefwres, which he hastens all he can by the Disquiet he gives her about her departing from Calvary. But would you know, Gentlemen, whether the Marquis de Gefvies is fincerely defirous to stand the Ha-zard of new Probations? Consider, I beseech you, that it is not

he who speaks; you see no Petition sign'd by him, no Procuration on his Part. What-

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Mademoifelle de MASCHANNY. 441

Warrant therefore have you for his Courage, and how can you certainly know that he promises any Thing to himself? You have nothing for it, but only the bluftering Words which you just now heard. But that is not his Courage, tis his Advocates. Alk that Advocate why that haughty Spirit lunk to of a sudden in the petitionary Part of his Motion. Why after so much Noise and Bustle he was force to conclude it as before? And why he neither ther offer'd, on his Client's Part, to prefent himself instantly to new Probations, nor demanded to come to the Tryal of it? By this you will know how to difting with

And that the Comparison of a Bully may be more compleat, be pleased to observe, Gentlemen, that the Vanity of such Sort of Swaggerers is always to procure Witnesses, who may blaze abroad their mighty Actions, as if they had been Spechators of them. And even forms the Mar-

quis de Gesvies done.

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He appeals to two Perfons, one of which he is very cautious in naming, and only speaks it in a Whisper, and then cries out, Men the have seen it, they have seen it; creditable Men they have seen it.

\* These are the very Words of a certain Relation of the

pretended Mand of the Papamanes, in an anciene will known Satire. We grant that the Author whom the Words are taken from, is no grave one; but it must ikerise be own'd, that the Objection he answers is much less fo.

Made note 13 EAS SOT NAY. A

But is it not ftrange, that the Marquis de Gelwes should shew to those two Persons a Thing which he could not sliew to the Searchers in eighteen Months? for so long the Caule had lasted. If this Person whom he appeals to, is an ordinary Man, his Fvidence is of no great Authority; if he is of a high Condition, either for Rank or Birth, he must be very much in the Marquis's Interest to stoop so low as to so the Part of a Searcher by him; and then too we object against his Evidence, on Account of his Zeal to serve the Marquis. The Respect I have for Men of Birth and Rank makes me uncapable of thinking that that Friend invented the whole Story; But of tentumes thro Zeal we give Way to Deception, and take Pleasure in being imposed upon.

As to that other Person whom he names, he never saw any Thing more than the Searcher saw; a fallacious Conformation, and nothing more: But it is scandalous to answer such Proofs; and I know not whether it is not more shameful to consute them, than to offer them. I therefore wave all that, and say, that if our Bravo found in him such Proofs of his Vigor, he needed not have recurred to borrow d Evidence; for as great Captains are never us'd to take out Certificates of their Valour, so was it never known, that those who were

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William)

Mademodelle de Maschanny. 443 were really Men did hire Preachers to prove their Vivility. All the Use that Monsieur de Gelvres can make of these little Tricks, is, to make People believe, that even according to his own Argument, he is not one of those whose savage Nature is afraid of the Afpect of a Man, and from thence it is easy to conclude, that he is not hinder'd by that same Nature from displaying himself to the Byes of the Searchers.

> M. BEGON, Advocate. M. BENARD, Attorney

That the Usage of the Kingdom (of France) has reduc'd the Proofs of Impotency, to the fale inspection of the Hulband as Foliat among the Federals, with all he other Doctors vouch'd by Viving in his Vidgar Crinions in verbo, In amentum. Neither do I\_reckon the feptima manu

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## Proposition, viz.

That the Usage of the Kingdom (of France) has reduc'd the Proofs of Impotency, to the sole Inspection of the Husband and the Wife.

Against certain Objections tending to introduce triennial Cobabitation

I Don't reckon the Oath among the Proofs of Impotency, because an Oath is no Proof; and if there are any who think otherwise, they need only consult John Andreas and Decius, upon the Rubrick de Probat. among the Decretals, with all the other Doctors vouch'd by Vivius in his Vulgar Opinious in verbo, Juramentum.

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Neither do I reckon the Septima manus emong the Proofs of Impotency; for befides, Medennifelle de MASCRANNY. 445 fides the Difficulty of knowing it, it is

no more than an Oath, may, such an Oath as does not take Place, but when the Hulband confessor Impotency; which gives a just Occasion to say, that it is not so

much a Proof, as a Corroboration of a Proof bandle of the Proof

There therefore remains nothing but the Trientium, which can render the Propolition doubtful. And upon this, I lay not that the Trientium is abutive id et, out of the Jurisdiction of the Ecclesiastical Judge, which I take to be the Meaning of the Word abutive in French but that it is neither practical nor practicable, nay, that it rarely happens to be in the Case for which the Apostolick Constitutions introduced it.

If the Triennium were practised, it would be seen by a great Number of Sentences or Decrees; but in a hundred Years there can but two be instanced; that in 1634, and that in 1634.

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beles, The first gave Occasion to an Appeal as abusive, and tis certain upon that Appeal, the Judgment was that it was not abusive: But it is one Thing to be non-abusive, and another Thing to be non-practised; and because it was resorted to in a private Case, where it might have its Use, it does not follow that it is commonly and daily practised.

for affirm and the other denies Confirmen-

Mademode Bold Deserving 844

As to the Record Prantite, which is that of 1675. It is in the Case of a wife, who was not a Vitigm, but confess to that her Marriage had been half confirmmented to when People happen to be in these Circumstances, the Triendium may do very well the cause on the one Side, the Hulband gives great Hopes, and on the other, the Wife, who has nothing to lose, has tikewise nothing to fear. This Reflection as important as it was, has been neglected by the Author of the Objections, who pass d it over in Silence. So that we are obliged to refresh his Memory, and to tell him into the Bargain, that a couple of Precedents, in a hundred, may, perhaps two hundred Years, do not quality a Man to say, that a Proof is in Usage.

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The Triennium is not practicable for two Reafons, both upon account of its Inutility, and because of the unfurmountable Difficulties which make the Practice of its impossible. The or no lease of a very first additional and a very first additional accountable and a very first additional accountable and a very first and a very first accountable for two practicable for two practicables and the practicable for two practicables and the practicable for the unformation and the practicable for the unformation and the practical practicable for the unformation and the practical pract

As for its Inntility, it is evident. If the Wife, who complains of her Huftand's Impotency, were a Widow, or corrupted before her Marriage, how, after three Years, can we be certain whether the Marriage was or was not confirmmeted. In that Cafe, therefore, the Question is to be resolved by the Oath of the Parties: But if one affirm and the other denies Consummation.

Mademorfelle de Maschanny. 447
fiotipulibre haiff we believe a And If other
tell that the Historian Cafe save and is
acquiefte with the Historian Carindas bes

ing Head of the Wifel, Lanfwer, that rather than make so great a Question depend upon the bare Oath of one loss the Parties, it were better to reiterate the Inspection of the

were better to remerate the Unipediculof the Hulband to often that the Seatchets might be affur'd of this Condition, shill one list

ried, and continue to after the three Years, then the Hulband's Impotency may very well be inferr'd from ther Virginitya But this Cafe would be a Miraole, for the Real form for forth in the preceding Writingad:

And if the ceales to be a Virgin, what will you inferr from thence, while offer Husband pretends that the has loft her Virginity one Way, and the, that the loft it another Way? So that we must again to fort to the Oath, which being to limit not more reasonable to have recourse for one to the Inspection of the two Radieshno judge of their Condition, than to traff to a bare Oath?

What Success, after this, are we to hope for, from the transient Companition of two Persons who abhor each lother? What Mediums, what Precautions can we take to screen the Wife from the Husband's Fury? And is it in the Power of human Wislom, to secure her from the Danger she tuns when

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Mademinge B. & A. Dad TANNY. 844

when the is a Wirgin. Tis for difficult a Thing, that the Author of the Objections, after shaving made a Promise of forme Precautions against this Peril, could not derivice to much as one.

Now its this Inutility, haccompany de with lo many Inconveniencies, which has caused the Triennium to be said ande, and fall into difuse, in desugliciem to hands of

But there are other Reasons fetch if from the Canons themfelvesoun Those Canons were not ignorant that the Cohabitation of an Impotent with a Wife is an Abomination: And therefore they never prescribed the Lifage of the Triennium, but in Cafe of extreme Necessity, and where all other Proofs were wanting; fi frigiditas prins probari non potnerit. Now this Cafe never happens but when the Hufband gives Tokens of Potency chowimperfect ones, and when at the fame Time the Wife is no Virgin For when the Hulband shews no Sign of Life, and when the Wife is a Virgin; thele two Things being put together, ido make the Proof of Frigidity, even the they had not dwelt together three full Years; provided their Cohabitation dasted a certain Space, according to the Prudence and Pleasifre of dinns, what Precautions can vegtuledto

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This is certain: In France the Searchers are the first, nay, properly the fole Judges of Impotency; and to prove this, is it not evident

Mademoifelle de Maschanny. 449
evident, that if there had been a Report
which had expressly declared Monsieur de
Geswes either potent or impotent, the
Cause would have been at an end? Therefore these second Judges, that is to say, the
Officials in afte acquiesce in a decisive Report.
for then the Thing is made out, Frigiditas
p, ins probais potest. Ergn, &c.

Now, if after two Inspections of the Hufland have been forderd, you frould order the Wife likewife to be inspected, thereby to enable the Searcher's (from infpecting them both) to make a decifive and definitive Report, in all likelihood those Searchers would not only declare that there is Impotency; but they would dikewife determine what Corre of Impotency of the Whatever happens, it is an Effay chat's indifpenfably necessary to be made before you proceed to the Triennium; because, tis fufficient to exclude the Triennium, that Frigiditas prius probari posit; and because we may always fay prius probani potest, fo long as ave have more tried all the Proofs which are Canonical and in Ulaged he vorg Experience has hitherto raught his athat when all the Proofs are exhausted, the Searchers determine the Thing, either from the fole Inspection of the Husband, or from the joint Inspection of the Husband and fition with more Confidence, best With only floke after the Attorney - General

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Gabi, and le Groffe, tho regularly ton, formed, were condemned upon the fole Inspection of their Persons: Mercier, Hu, bineau and Kendin, upon the joint Inspection of their own Persons, and their Wives And thus it is, that the Searchers take their Measures when they meet with no Instructions to help them; and when once they come to a Refolution, Potency, or Impotency is proved. And therefore Verdin, who demanded the Telephinin, could not ebtain it, he being told, Rigiditas probata freding them both) to make a decifive auth Another Reason which has brought the Trickeins into difuse a The Searchers ha ving always come to a Determination, if not reponsy wifiting the Hufbanit alone, at leafe, upon visiting him and his Wife, the Impodency was held, info facte, to be made out, and the Triennium, which was before he impracticable, hay dangerous and pernitrier cous in itself, was after this Proof, deemd Grin a Superfluous livil a because it is needless to pin. proved by the Triemoum, what is already .oH proved by a Report of Searchers ors didw been fire Cl terns, wherefore call the Proofs of Impotency do depend upon Searchers, we had and Reafon to fay, that they were reduced to Huff the fole Inspection of the Husband, and mith Wifebrie And owe ladvanced this Proper theog fition with more Confidence, because we Year only spoke after the Attorney - General, Upor Monfieur

Mademoifelle de Maschanny. 450 Monfieur Lameignon, and he himfelf froke according to the Ulage. One would think we ought to fear nothing, when we follow de lo great a Master, and yet we could not escape being cavill'd at; but this Cavilly ling does not fall upon the Author of the Proposition, it falls upon one of the most deferving Magistrates that ever was; for he fay's plainly in the Affair of the Lady Pigonffe, that the ethablished Order in Epifcepal Courts for Questions of Impotency, saufiles Salely in wishing the two Parties a buscuit on T From this established Principles mantes ly, that Impotency must be founded by all lawful Ways, before we proceed to the Triminmy the Decrees of Parliament shave design others Conference vallation than the Ecclesia final Judge has undertaken to purhe Impotency by the ordinary Methods; he is cut off from having recourse to the triendial Cohabitation! This is the Dodrine of two Decrees reported by Chape pin. in confifted the Abufe. . In the Cafe of other former antherenhad been a Sentence of Diffolution after ret hellive Wifitations, and the Congress, and upon and Appeal thrown in by the Hustiend, can cin validating Sen ence passd in the Methopolithm Goort, which ronder'd the quartied Couple to dwell togisher a Year longer, no learn plete the three Years Upon this, the Wife appeals to the Paulisplea ment,

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ment, who declare, that the Sentence of the Metropolitan was beyond his Jurisdiction, because the Prigidity being Notorious from the Inspections and the Corgress, the Parties were not in the Case of the general Rule of Chap Landablem, but in the Case of the particular Exception, nil

Frigiditas prins proba i pomeritis M Billy

The Case of the Second Decree is yet more apposite. After the Husband was willted, the Congress was order'd by the Official The Husband appeals to the Metropolitan who corrects the Sentence, and instead of the Congress, orders the Trientium. Upon this it was adjudged, that the Metropolitan had exceeded his Juristiction, because the first Judge having undertaken to discover the Impotency by the Congress, and that Method being sufficient for such Discovery, it was infringing the Camons to have recourse, in that Case, to the Trientium. And it was in this Infraction, where in consisted the Abuse.

Promhence I draw two Principles: One, that the Trientium is not allowable, but when all other Proofs are wanting: The other, that according to our Manners and Usage, the Trial of three complete Years is not necessary; fince the Husbands, condemned by those Decrees, were disappointed of the Residue of their three Years which is directly opposite to the Maxim

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pleaded by those of the other side, namely, that without a Cohabitation of three complete Years, it is impessible to know whether there is Frigidity. And this Maxim is likewise contrary to the Canons, since the Canons suppose that the Frigidity may be ascertained before the three Years; otherwise, they would not have admitted that Exception, so trigidites prime probability non potnerity.

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Applying these Principles to the present Caule, I conclude from the first, that since the Impotency of Monsieur de Gestres may be known, provided you will to his two Inspections, add that of his Spouse, sit would be transgressing your Jurisliction, and contravening the Rules of the Church, to neglect this Proof, and run headlong into the Tricknium.

from the second Principle I conclude, that it fignifies little, the Marquis's not having been three Years with his Wife, if we can come to the Knowledge of his frigidity; by visiting the Person of his wife, a visiting the Person of his wife, a visiting the Person of his wife, a visiting the Person of his wife.

But to these two Principles Ladd a third, to loss manifest, which as you shall by and by see will bear a just Application to the sand; namely, that when once an licele-lastical Judge has set himself to discover impotency by the Way of Searchers, he is not at Liberty to quit that Way to make

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Use of the Triennium; at least, he cannot do it kill after all Hope is low of agetting any Light from the Searcher's Are. This you fee was condemn'd by the feeded of the two Decrees above quoted il The bril. pary Official shad degene by the Way of Searchers dand then dwith the Congress The Metropolitan goes couplof, this Road into that of the Trienkiden. In The Decree of the superior Court declares, that he exceeded his Jurisdiction, and that it was sabulive, because, when sonce a Judgetha pitch'd upon the Manner of Investigation for the Discovery of Impotency, betis of lig'd to purfue it to the End; and that to chop and change from one Proof tolandthe, without going through with any, is a Le with unbecoming a Judge, and which like wife by a fecond Sentence takes away the Right that was acquift do byothe firsturing

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nonNow, pthel Barties are exactly in the Cafe; and what makes them to, his the Sentence of the 4th of Marcholast, for reckon for nothing that which order dath first Visitation, because it is purely a Thin of Course, and prejudges nothing a Builfo that effthe 4th of March, which was give after a full knowledge of the good Confo mation of the Huband, it expressly cleres, that the Impotency must be div into by the Means of the Searchers, an mand confequently, that there's no departin do th fro

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from this Method 'till it is totally sone through with a which it is not, when the Inspection of the Wife may enable the Searchers to judge definitively of the Im-

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This Argument can receive no Answer, but by laying that the liffection of the Wife concludes nothing, even tho the Hufband cannot prover his Potenby But to talk thus, is arraigning the Canons which have introduced the infection of the Wife: it is den finisher all the Danonists who approve of legiandinhe bulle which admits thereoff as has been demonstrated by fo man V Precedents eited as swell in Court as in printed Papers A Man Mouldenot be to fond of his Sentiments, as to prefer them to those of all ancient and modern Anthors, who have univerfally owned the inspection of the Wife to be a lawful Proff not only admittable, but affinally admitted is necelary for the Julge, wlegald offi

Again, we had Reason to distinguish. after Heffienfis and the most eminent Canonifts, between the Chapter Landabilem made for Frigidity, and the Chapteri Litters made dow, nor Appearance of Somewasonbein

In the former, three Years are allow'd or Tival toma Hufband, who promises fomething from his Person, and who demands Time to fee what he can do in it. ran in the latter, the three Years are allow'd rtin

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to the Jirige for discovering whether the Timpotency; be Sorcery, and as fuch may go off, or whether it be Frigdity, and as fuch continue for ever. It is in the ficond Case, and not in the first, that the three Years are firstly to be observed, as has been provid by the preceding Writings, yet they who carp at those Writings, confound the two Cases together without answering the Reasons and Authories brought to demonstrate the Difference there is between a Probation granted to a Husband upon his Request, and a Proof which the Law points courte the fudge as the Light he is to folalowno There liswa Difference between Pro battemand Proof. The first is for the Case of Frigidity, without any Sufpicion of Sor ceryogrand that is out Cafe; and thus the Prollection milk be demanded by the Party. The fedoral, is dfor the Cafe of Sufpected Sorbeny's and the wthe Proof by three Years is necessary for the Judge, whether the Hulband demands it or hod sw

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Probation, and mot of the Proof fines there lise neither Suspicion, nor Shadow, nor Appearance of Sorcery of there fore is here any Rosen for the Tringlem, Monsieur de Gesvies must have de manded it, and to obtain it, it would have been necessary for him to have given at least somethight Symptoms of Potency according

Mademoiselle de MASCRANNY. 457

according to the Opinion of Hutman and Tagereau. Now, we are very far from all these Cases; M. de Oeswes prays no Probation; he well knows it would do him no good, as likewise, that such a Demand would look, odd in a Husband who says he has consummated. Farthermore, Monseur de Gasures gives not the least Token of Potency, the smallest Indicum, the weakest Beginning; consequently his Request would not be admitted, even though he should ask it.

alk it. viden M. BEGON, Advocate. elde geween de Mes Mes between able Womens Men, and those that are frigid, is this: In the former, the Penis is contracted and flirunk up, during the Time that it does not actually fland; so that it is impossible to judge of its Length and fift ben f sol de in those Whereas dead a dead that are he izzle, but Man. For ics never co mels, (as in a continual other Men when italicads) but then it always hangs its Head, and is uncapable of a perfect or confident Erection. See Zacchies upon this Head in Chapter concerning

Ly Telegraphity and Impotency.

Whent, quotauct, &c. It has been oblery'd by all who have written concerning.

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Mademie He de Mascranny. 457 according to the Opinion of Helman and

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good, as the will prome by Demand would

N.B. THE French Counsellor booing in p. 330, and p. 333, 334 thought sit to deliver his Thoughts in Latin for the Use only of such particular Readers as understand that Language, we have thought sit to put the same into English, that it may be of more general Use.

Certum est, &c. It is undeniably true, and is confirmed by the Experience of all Mankind, that the Difference between able Womens Men, and those that are frigid, is this: In the former, the Penis is contracted and shrunk up, during the Time that it does not actually stand; so that it is impossible to judge of its Length and Thickness, unless it is erect and stiff. Whereas its quite the contrary in those that are frigid, as in the Carcals of a dead Man. For such indeed have a Pizzle, but it's never contracted or flyttink up; it has a continual Length and Thickness, (as in other Men when it stands) but then it always hangs its Head, and is uncapable of a perfect or confiftent Erection. See Zacchias upon this Head in Chapter concerning the Tokens of Virility and Impotency.

Notant, quotquot, &c. It has been obferv'd by all who have written concerning

Impotence.

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#### MPPENDTY.

Impotency, as well Canonists as Physicians that there are many Men whose Penis very readily rifes, nay, lifts its felf up in a most proud and oftentatious Manner; but then its Fury is as foon spent; like a Fire made of Straw, the Moment it appreaches it's Mistress Door, it balely falls down at the very Threshold, and pitcoully vomits out its frothy Soul, [alluding to that Verse of Tiballus, Janua difficilis Domina re verberet imber.] These Kinds of Impotents are not raremor unfrequent. Hoftienfis queries whether they are to be rank'd among the Frigid, fince their Vice proceeds not from the Frigidity, but rather too much Calidity of their Blood. Of this Sort of Infirmity, we have a noted Inflance in the Baron du Pont mention'd by Argentraus This Lord was separated from his Wife Catherine de Parthenay, Heirels of Soubize for Impotency. Argenteaus, in the Article Description of his Impotency: Quidam Juvenis valenti corpore uxorem inire non poterat, etsi bene nasutus, sed simul ac nervum admoverat, semen pracipitata festinatione ejiciebat, ita ut mibil intra injiceret, nec intromittere poffer genitale. He was a young Man, of a hale Constitution, but cou'd not enter his Wife's Body, tho rarely well hung but fo foon as he approach'd her with his Penis, his Semen flew off with fuch Precipitation, X 2

#### MPPENDYK.

that the was not at lall the better for it, nor dould his Label of Morsality make its Way into Love's Paradife dibest you sin 19 Be What as it will four Searchers warn us hot to trust to the Stiffness of the virile Organ; there being in many an erective Force, but not effective, because not folid, fober, and frong enough to hold towthe Ends lands therefore we must abways nonfult the Wife's Person, it we would know what has been done by the Mand whether at first Sight he appears to be a Man, or whether heldoes not. For the appears to be a Man, he is not presently to be concluded fuch, because there are some whose Enfignicf Manhood is a mere Chieat, igives mighty Hopes obut performs nothingal Again, who the idoes not appear an Mangrit does not follow, that he's not a Man whe canle the Tokens of Manhood de fometimes direction by inspecting the Hushand no certain ludgment cann be made eithen for or against Virility sobute by inspecting the Wife both Doubtenare removed License in the Wife, the Seal of Virginity appears to be broke, it is most certain, both that the Hufbandhas Vigourwnsy, and an efficacious Vigour SuButuif the Seals Pemaid whole and linhurt othere is, fayothere nons, a dertain and violent Sufpicion other the Vigour of the Man, if it did exect it felf,

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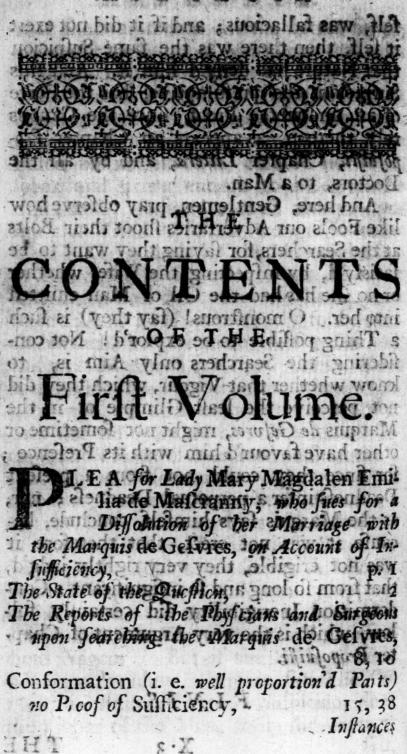
felf, was fallacious; and if it did not exert it felf, then there was the same Suspicion that Nature had deny'd him it. And this Suspicion, the presumptive, has the Force of an undoubted Proof, since the Canons rely thereon, as appears per Chapter Propositifi, Chapter Littera, and by all the

Doctors, to a Man.

**九边** 

And here, Gentlemen, pray observe how like Fools our Adverfaries shoot their Bolts. at the Searchers, for saying they want to be fatisfy'd, by inspecting the Wife, whether or no the has had the Oil of Man emitted into her. O monstrous! (fay they) is such a Thing possible to be explor'd! Not confidering the Searchers only Aim is, to know whether that Vigour, which they did not perceive the least Glimpse of in the Marquis de Gesvres, might not sometime or other have favour'd him with its Presence; for fince they could not from a present Deadness infer a perpetual Deadness, nor, as the Marquis fays himfelf, conclude, because it was not erect, that therefore it was not erigible, they very rightly judg'd, that from fo long and fo infignificant a Condormition Inerigibility did certainly follow, which is the very Argument of Chapter Proposuisti.

FINIS



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#### The Counquet.

Tallancer of Jeberal Imporents who bave been " divorody the they all had a good Comforreites Diverging the Parts of thindrenmen The Virginity of the Wife, the only sure Proof of the Insufficiency of the Mulband, The Visitation (i. e. Inspection) of the Wife, eb anthorist by the Church red to small 224 REPLICATION, against the Marquis Ade Gefvres, The Lawfidness of Dinness for Impotency, proo'd from the best Authorities, 1 3000 40 A Proof of the Impotency the Marquis is charged with, viz Prigidity, 41 Copulation, that All traly deferib d, 1/10 54 Virginity, the Marks of it evident, 89,92,240 Condormition (i.e. nocturnal Cebabitation) forrobabilities, de tinfice ichstellidadorfoz INTERROGATORIES of Monfieur and Madam de Gelvres; with proper Notes and Reflections upon the principal Articles, Expentation of the Jecond Proposition, That New FACTS and ARTICLES, 1167 MFMORIAL conterning Triennial Cobabitation, relating to the Question of Impotency, depending between the Marquis organis, (i. e. the performing that Aid bind General Answer to the Marquist Memorial; Concerning the Necessity and Certainty of the Proofs of Importency in generale As also concerning the Parallel of the Probfs refulting from the Inspection of the Wife, who affirms

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